



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार 17 अक्तूबर, 2012/25 आश्विन, 1934

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA

NOTIFICATION

Shimla-02, the 05th October, 2012

No. HHC/Admn.3 (336)/92-I.—05 days earned leave on and *w.e.f.* 08-10-2012 to 12-10-2012 with permission to prefix Sunday falling on 07-10-2012 and suffix Second Saturday and Sunday falling on 13-10-2012 & 14-10-2012 is hereby sanctioned in favour of Shri Prem Chand Verma, Secretary of this Registry.

Certified that Shri Prem Chand Verma is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Prem Chand Verma would have continued to officiate the same post of Secretary, but for his proceeding on leave.

By order,
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 2012

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No:	Case No:	Title of the Case	Date of Award
1.	28/2011	S/Shri Santosh Kumar Vs M/s Nickwny EDM wires & consumables Ltd. Baddi, Distt. Solan.	09-08-2012
2.	71/2010	Kamlesh Devi Vs M/s Bhurji Super Tele Industries, Parwanoo.	09-08-2012
3	11/2012	Employees Union Vs M/s Cosmo Ferrites Ltd. Jabli.	09-08-2012
4	40/2008	Dayanand Chand Vs Dy. Director of Education Shimla.	27-08-2012
5	19/2008	Sada Ram Vs DFO. Nalagarh & others.	14-08-2012
6	63/2008	Ram Nath Vs M/S Purolator India Ltd. Parwanoo.	18-08-2012
7	58/2008	Dhanvir Singh Vs Director Food Supplies and consumer & others.	18-08-2012
8	78/2009	Balak Ram Vs Sh. Suri Ram Vs Registrar, Dr. Y.S. Parmar University of Horticulture Nauni, Solan.	28-08-2012
9	361/2002	Brij Lal Vs M/s Pamwi Tissues Ltd. Solan.	29-08-2012
10	10/2002	Salig Ram Vs M/s Shivalik Hatcheries unit-11, Solan.	31-08-2012
11	13/2002	Pushpender Singh Vs —do—	31-08-2012
12	15/2002	Bhag Singh Vs —do—.	31-08-2012
13	09/2002	Ujagar Singh Vs —do—.	31-08-2012
14	12/2002	Tara Singh Vs —do—.	31-08-2012

By order,
Sd/-
ACS (Labour & Employment).

App. 28/2011

09.08.2012

Sh Santosh Kumar V/s M/s Nickuny EDM wires& consumables Ltd Baddi

Present: Shri A.K Sharma, AR for petitioner.
Shri P.S Chauhan, AR for respondent.

Today, Shri A.K Sharma on behalf of the petitioner has disclosed that parties have entered into a settlement. He filed written settlement Ex. PA revealing that the management/respondent is agreed to pay a sum of Rs. 15,000/- (Rs. Fifteen Thousand only) as full & final payment to the petitioner. Statement of Shri A.K Sharma, AR for petitioner is recorded.

In view of said settlement, petitioner agreed not to press his claim. Hence, in the light of aforesaid compromise, this petition stands compromised. The statement of Shri A.K Sharma, AR as well as Ex. PA shall form part of this award and the award is accordingly passed. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
9/8/2012.

Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 78 of 2009.
Instituted on. 29.9.2009.
Decided on 28.8.2012.

Balak Ram S/o Shri Surat Ram R/o Village Dilman, P.O Kunji, Tehsil Pachhad, District
Sirmour, H.P.

...Petitioner.

Vs.

The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District
Solan, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C Bhardwaj, AR.

For respondent : Shri D.K Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Balak Ram S/o Shri Surat Ram workman by the Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District Solan, HP w.e.f. 1.4.2000 without complying the provisions of Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of back wages, seniority and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed the claim stating that he was engaged by the Respondent University for the first time on 19.8.1986 and remained in continuous service when he was illegally terminated on 1.4.2000. The respondent did not issue any notice before terminating the services of the petitioner. No opportunity was given to the petitioner to defend himself. The petitioner worked more than 240 days in a calendar year prior to his termination on 1.4.2000. So, he was entitled for protection under the provisions of Industrial Disputes Act, 1947. Hence, he prayed to set aside the illegal termination order dated 1.4.2000 and to reinstate him with full back wages, seniority and other service benefits.

3. In reply, the respondent took preliminary objections as to the petitioner being a contractual labourer and non entitlement of petitioner to get the relief of section 25-F of Industrial Disputes Act, 1947. On merits, the respondent stated that the petitioner worked during the years of 1986-87-88 and 1989 as contractual labourer and thereafter, again worked in the years of 1990-91 and 1993. The petitioner did not complete 240 days in 1986, 1992 and 1994, so, he was not entitled for the benefits of sections 25-B and 25-F of Industrial Disputes Act, 1947. It was further stated that the petitioner abandoned the work on his own. The respondent further stated that vide letter dated 25.7.2002, the petitioner was asked to come for contractual appointment but he did not turn up. It was further stated that w.e.f. 1.1.2002, the appointment of contractual labourer on muster roll basis was banned by the Respondent University, so, claim petition of petitioner is not maintainable. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied the averments made in the reply by the respondents and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of the services of the petitioner w.e.f. 1.4.2000 by the respondent is in violation of the provisions of the Industrial Disputes Act, 1947?
...OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?
...OPP
3. Whether the petitioner was engaged as contractual labourer on fixed salary under the contractual labour system under the government funded scheme?
...OPR
4. Whether this Court has no jurisdiction to try and decide this petition?
...OPR
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement with seniority and continuity in service but without back wages.
Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered in negative and the relief is granted to the petitioner per operative part of award.

Reasons for finding

Issue No.1& 3.

9. Both these issues are interlinked and can be disposed by a single finding.

10. From the pleadings of the parties, it is clear that the petitioner was engaged by the respondent university in the year, 1986. As per respondent, the petitioner was engaged on contractual basis. On behalf of respondent, RW-1 Shri Liaquat Ali was examined and he has stated that he was authorized to depose in this case. His statement is revealing that the petitioner was engaged for the first time in 1986 on contractual basis but the respondent did not produce any contract between the parties to show that the petitioner was engaged on contractual basis. Moreover, in his cross examination, RW-1 Shri Liaquat Ali has stated that petitioner was engaged on 19.8.1986 on daily wages basis. So, it stands established that the petitioner was a daily wagger workman under the respondent university.

11. The petitioner Balak Ram stepped into the witness box as PW-1 and filed his affidavit which is revealing that he joined the respondent university on 19.8.1986 and worked till 1.4.2000 continuously when his services were illegally terminated. Ex. PA is the termination letter of the petitioner issued by the Deputy Comptroller of respondent university revealing that the services of petitioner Balak Ram were disengaged w.e.f. 1.4.2000. This letter is further revealing that in the year of 1999, petitioner had worked for 319 days and from Jan., 2000 to March, 2000, he had worked for 89 days. Petitioner also produced in evidence mandays chart annexure P-7. From the careful perusal of Ex. PA and annexure P-7, it is clear that prior to 1.4.2000, the petitioner had completed 240 days in a calendar year. So, the petitioner was entitled for the protection of section 25-F of Industrial Disputes Act, 1947, under which it was obligatory upon the respondent university to issue a notice of one month before terminating the services of petitioner or to pay one month's wages along-with compensation to the petitioner. In this case, the compliance of said mandatory provisions of law has not been made by the respondent university. Consequently, the termination of petitioner w.e.f. 1.4.2000 is illegal and unjustified. Consequently, the termination order Ex. PA is hereby set aside being illegal, null and void.

12. On behalf of respondent a plea has been raised that petitioner himself has abandoned the job. But Ex. PA is revealing that the services of petitioner were disengaged w.e.f. 1.4.2000. So, there is no question of any abandonment by the petitioner. Moreover, RW-1 Shri Liaquat Ali has stated that in the year of 2000, no notice was issued to the petitioner asking him to come back and join his duties.

13. On behalf of respondent, reliance was made on letter annexure P-6 dated 25.7.2002 vide which the petitioner was asked to join the job on contractual basis on 31.7.2002. There is nothing on record to show that said letter was received by the petitioner. But for the reasons

discussed hereinabove, the petitioner was daily wager workman/employee under the respondent university, therefore, there was no occasion for the petitioner to join the job on contractual basis in 2002, especially when, his services as daily wager were illegally terminated on 1.4.2000. This, letter annexure P-6 would not be helpful to the respondent.

14. Accordingly, for the aforesaid reasons issue no.1 & 3 are decided against the respondent.

Issue No. 2.

15. For the reasons recorded hereinabove while deciding issue no.1 & 3, the petitioner is entitled to reinstatement w.e.f. 1.4.2000 with seniority and continuity in service. However, keeping in view the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No.4

16. The present reference has been received from the appropriate government for adjudication under section 10 of the Industrial Disputes Act, 1947 and as such this Court has got jurisdiction to try and decide the reference as well as claim petition filed by the petitioner. Hence, this issue is decided against the respondent.

Relief.

For the reasons recorded hereinafter, the claim of the petitioner is allowed and the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 15 of 2002.
Instituted on. 17.1.2002
Decided on. 31.8.2012.

Bhag Singh S/o Shri Pritam Singh R/o Village and P.O Panjehra, Tehsil Nalagarh, District Solan, H.P.

...Petitioner.

Vs.

M/s Shivalik Hatcheries Unit-II, VPO Panjehra, Tehsil Nalagarh, District Solan, H.P through its Managing Director.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj , AR.

For respondent : Shri Rajeev Shasrma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the enquiry which caused the termination of the services of Shri Bhag Singh S/o Shri Pritam Singh w.e.f. 20.10.2000 by the Managing Director, M/s Shivalik Hatcheries Unit-II, Village and Post Office Panjehra Tehsil Nalagarh, District Solan, H.P is fair and justified? If not, what relief of service benefits including continuity in service and amount of compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was workman under the respondent and remained as such in the employment till 20.10.2007, when his services were dismissed without following the principles of natural justice. The petitioner challenged the termination order being illegal and out-come of partial domestic enquiry. In fact, the petitioner was active in trade union activities, so, the respondent was prejudiced against him. A story was fabricated against the petitioner and there was conspiracy on behalf of management, as the result, a false criminal case was registered against the petitioner. The defective chargesheet was served upon the petitioner. Before domestic enquiry, the management did not supply list of witnesses as well as documents relied upon by the management. The enquiry officer did not adopt the procedure established under law. The entire enquiry proceedings as well as enquiry report were challenged by the petitioner being violative of principles of natural justice. The witnesses examined by the management were doubtful. The enquiry officer did not explain the charges properly to the petitioner, and due opportunity to defend himself was not given to the petitioner. Before imposing extreme penalty of dismissal, the service record of petitioner was not considered and appropriate time was not given to him to reply the show cause notice. Hence, petitioner prayed to set aside the enquiry report and his dismissal order and respondent be directed to reinstate the petitioner in service with seniority and full back wages along-with other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein respondent took preliminary objections as to maintainability, suppression of material facts by the petitioner and want of legal reference. Respondent also stated that the petitioner was gainfully employed and working with some other concern and earning handsome amount. On merits, the respondent stated that the petitioner did not reveal the true facts. The petitioner along with other workers was on sanctioned leave on 8.5.2000, when he along-with other workers reached the premises of factory of respondent at 2.00 PM. There was altercation between petitioner and other workers and the security guards. At about 4.00 PM, the petitioner and other workers without any permission entered into the factory and gave severe beatings to the supervisory staff as well as senior officers of the factory. Shri Faujdar Singh, Assistant Manager sustained fracture in his arm. The petitioner along-with other workers also damaged the gate and other property of the factory and also did not allow the injured to be taken to the hospital. On 6.6.2000, at 6.00 PM, the petitioner along-with other outsiders assembled outside the main gate of the factory and raised slogans against the officers of the respondent factory and they violated the orders of Ld. Sub Judge, 1st Class, Nalagarh dated 8.5.2000 vide which the petitioners were restrained to do said unlawful activities. The petitioner alongwith other workers pelted stones on tempo No. HP 12-2463 and

damaged it. Due to said misconduct, the respondent management chargesheeted the petitioner along-with other workers and a proper and fair domestic enquiry was conducted against the petitioner wherein the charges of misconduct were proved. Proper and due opportunity was given to the petitioner to defend himself. The petitioner cross examined the management witnesses and after management witnesses, the petitioner was given opportunity to produce his witnesses in defence. Before dismissing petitioner, a show cause notice was served upon him. The matter was also reported to the Police. There was no violation of principles of natural justice during the enquiry. The guilt of petitioner could not be ignored, hence, the punishment of dismissal was awarded. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the enquiry which caused termination of the petitioner w.e.f 20.10.2000 by the respondent is fair and justified?

....OPR

2. If the issue no.1 is not proved what relief of service benefits including continuity of service, back wages and amount of compensation is entitled to?

...OPP

3. Whether the claim of petitioner is not maintainable in the present form as alleged?

...OPR

4. Whether the petitioner has not come to the Court with clean hands and has concealed the material facts as alleged?

...OPR

5. Whether the reference is bad in law and has not been made by the competent authority as alleged?

...OPR

6. Whether the petitioner is gainfully employed, if so to what effect?

...OPR

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 No.

Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3. No.

Issue No.4 No.

Issue No.5 No.

Reasons for finding***Issue No.1***

9. After hearing both the parties and going through the record, I am of the considered opinion that the termination of petitioner w.e.f. 20.10.2000 by the respondent is not justified and liable to set aside, for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is undisputed that the petitioner was a workman engaged by the respondent and he was terminated w.e.f. 20.10.2000. As per respondent, petitioner along-with other workmen assembled outside the factory of respondent on 8.5.2000 and 6.6.2000 respectively and damaged the gate as well as other property of respondent and also caused injuries to the officials as well as officers of the respondent factory by beating them. One Shri Faujdar Singh, Assist Manager sustained fracture in his arm. For the said misconduct, petitioner was charge-sheeted and a domestic enquiry was conducted against him in which the charges against the petitioner were proved. Consequently, a show cause notice was served upon the petitioner and finally he was terminated w.e.f. 20.10.2000.

11. The main question for determination before this Court is whether the domestic enquiry conducted against the petitioner is fair and justified. Taking into account the evidence of both the parties and other material on record, to my mind, the domestic enquiry is not sustainable under law as the principles of natural justice have been violated.

12. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts stated by him in the claim petition. On the other hand, respondent examined six witnesses. RW-1, Sanjeev Sharma, Advocate is the enquiry officer, RW-2, Harbhajan Singh, the Deputy Manager of respondent, RW-3 Milap Chand, the Assistant Manager, RW-4 Mukesh Chand, Labour Inspector, Nalagarh, RW-5 Faujdar Singh, the then Assistant Manager who sustained injuries in the occurrence in question and RW-6 Susheel Kumar Singh is the Assistant Manager Venkys India Ltd., Allahabad. All these witnesses deposed that the petitioner along-with other workers entered into the premises of respondent factory on 8.5.2000 at 4.00 PM and quarreled with staff members and damaged the property of factory and gave beatings to the staff members with "Dandas" as the result, Shri Faujdar Singh sustained fracture in his arm. For this occurrence, the petitioner and other workmen were chargesheeted and domestic enquiries were conducted against them wherein they were held guilty. The petitioner has challenged the domestic enquiry being violative of principles of natural justice. The copy of enquiry report is Ex. R-4 which I have carefully perused. The most important witness in this case is RW-1 Shri Sanjeev Sharma, Advocate who was appointed as an enquiry officer and conducted the domestic enquiry vide his report Ex. R-4. In said report, it has been mentioned that the enquiry officer apprised the delinquent (petitioner) about the procedure to be adopted. Both the parties were apprised to produce their respective evidence along-with witnesses.

13. The cross examination of RW-1 is important wherein initially he has stated that all the documents were supplied to the worker well before starting of the enquiry but he again stated that some documents were supplied before enquiry whereas some were supplied before cross examination of the witnesses. Here, the cross examination of petitioner Bhag Singh is relevant wherein he admitted that on 9.9.2000, he received copies of Ex. P-9 to Ex. P-12 during the course of evidence in domestic enquiry. As per record, the said documents were not earlier supplied to the petitioner before the start of domestic enquiry and those documents were supplied during evidence. These facts are sufficient to establish that the documents Ex. P-9 to Ex. P-12 were supplied to the

petitioner during the course of evidence in domestic enquiry for the first time on 9.9.2000. That means said documents were not earlier supplied to the petitioner before the start of domestic enquiry. It established that at the time of service of chargesheet, said documents were not supplied to the petitioner. It has caused serious prejudice to the petitioner, because, he could not defend himself properly and effectively in the absence of documents which were relied upon and produced in evidence by the management. I am of the opinion that a reasonable opportunity to defend the petitioner was denied. On this ground, the enquiry report is not justified and liable to set aside. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-I LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004.**

14. On behalf of respondent, RW-4 Shri Mukesh Chand Labour inspector, Nalagarh was also examined who has deposed that he had received demand notice of the workers of respondent factory dated 2.5.2000, copy of which is Ex. R-A along-with other demand notice of strike dated 2.5.2000 which is Ex. RB and the conciliation was fixed and notice of conciliation was issued which is Ex. RC. Ex. RC is revealing that conciliation was fixed for 23.5.2000 upon the demand notice. The cross-examination of this witness is revealing that one demand notice dated 24.4.2000 was also received and no action on this notice was taken. There is nothing in evidence what happened to said demand notice whether that demand notice was finally decided or not. The petitioner in para 4 of his affidavit has categorically deposed that the demand notice was not considered and the members of the union were compelled to resort to agitation. This evidence on record established that when the services of petitioner were terminated w.e.f. 20.10.2000, the demand notice was pending. In the light of these facts, section 33 of Industrial Disputes Act, 1947, is applicable which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

15. So, it was mandatory for the respondent to obtain the prior permission/approval from the competent authority before terminating the petitioner from service. Since there is violation of section 33 of Industrial Disputes Act, 1947, therefore, on this ground also the termination orders of petitioner is not sustainable.

16. On behalf of petitioner Shri J.C. Bhardwaj, AR has argued that qua occurrence in question a criminal case was registered against the petitioner and other workers in this after conducting trial, the Criminal Court has acquitted the petitioner, therefore, he prayed that in the light of said acquittal order, the petitioner could not be held guilty in domestic enquiry.

17. After due consideration, I am not in agreement with the aforesaid submission made by Shri Bhardwaj on behalf of petitioner. To my mind, in a criminal case the mode of proof is strict and the standard of proof is higher than that of in the domestic enquiry. In the domestic enquiry the matter is decided on the preponderance of probabilities whereas in a criminal trial the proof is required beyond the scope of all reasonable doubts, therefore, the nature and scope of both is different. The judgment of criminal proceedings cannot be made a base to set aside the domestic enquiry report. Here, Ld. Counsel for respondent rightly relied upon law laid down by Hon'ble Supreme Court in the matter of **2012 LLR 8**.

18. Accordingly, for the aforesaid reasons, this issue is decided against the respondent.

Issue No. 2 & 6.

19. Both these issues are interlinked and can be disposed of by a single finding. For the reasons recorded hereinabove while discussing issue no.1, the termination order of petitioner w.e.f. 20.10.2000 by the respondent is not justified being illegal having been passed on the report of domestic enquiry in which the principle of natural justice were violated. Consequently, the petitioner is entitled to be reinstated in service by the respondent with seniority and continuity. However, taking into account all facts and circumstances of the case, the petitioner is not entitled for the back wages and compensation. It cannot be believed that for the last about ten years, the petitioner is not gainfully employed. Although, the petitioner has denied that he is gainfully employed during this period but the version of petitioner cannot be accepted. The respondent has alleged that the petitioner is having agricultural income and apart from this, he has been engaged in some other factory. Although, there is no specific evidence in this regard but I find substance in the said plea taken by the respondent. The petitioner cannot remain without any job for a period of about ten years.

20. Hence, in the light of facts and circumstances of the case, the petitioner is not entitled to back wages and compensation. He is only entitled to be reinstated in service with the benefit of seniority and continuity in service. Hence, issue no.2 is partly decided in favour of petitioner whereas issue no.6 is decided in favour of respondent.

Issue No. 3.

21. There is nothing on record to show that the petition is not maintainable in the present form. Accordingly, this issue is decided against the respondent.

Issue No. 4

22. I do not find any evidence on record to suggest that the petitioner has not come to the Court with clean hands and he has suppressed and concealed material facts. The petitioner has categorically challenged the domestic enquiry. So, in the absence of any specific evidence on this issue, it is also decided against the respondent.

Issue No. 5.

23. From the careful perusal of record, the reference has been made by the competent authority legally and in accordance with law. Hence, this issue is also decided against the respondent.

Relief.

For the reasons recorded hereinafter, the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without holding proper and fair enquiry. As the result, the termination order of petitioner w.e.f. 20.10.2000 is hereby set aside. Consequently, the petitioner is entitled to be reinstated in service on the same terms and conditions with the benefits of seniority and continuity in service but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 361 of 2002.
Instituted on. 14.11.2002
Decided on. 29.8.2012.

Brij Lal S/o late Shri Beli Ram R/o Village Plankhwala, P.O Barotiwala, District Solan,
H.P.

...Petitioner.

Vs.

The General Manager and Vice President, M/s Pamwi Tissues Ltd., Village Jharmajri, P.O Barotiwala, District Solan, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rakesh Manta, Advocate.
For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Brij Lal S/o Shri Beli Ram w.e.f. 15.9.2001 by the General Manager and Vice President, M/s Pamwi Tissues Ltd., Village Jharmajri,

P.O Barotiwala, district Solan, H.P on completion of more than 240 days of continuous service, without complying with the provisions of section 25-N, 25-G and 25-H of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits including seniority and back wages the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was appointed as helper by the respondent on 8.10.1983 and was retrenched from the services on 15.9.2001 in violation of the provisions of Industrial Disputes Act, 1947. The petitioner completed 240 days in a calendar year before his retrenchment. No notice was issued to the petitioner and he was also not paid wages in lieu of his dismissal. Consequently, petitioner prayed that he be reinstated with full back wages along-with consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein a preliminary objection was taken that there was a settlement between respondent and workers union under section 12(3) and section 18(1) of Industrial Disputes Act, 1947. No other workers raised any objection. The factory of the respondent was declared as sick company by Board for Industrial and Financial Reconstruction (BIFR) and a scheme of rehabilitation was also framed. As such, the management and the workers union entered into an agreement. As per settlement, services of twenty one workers were dispensed with and they were given compensation. All the other workers accepted the compensation and left the factory premises except the present petitioner. The petitioner was in the habit of litigations against the respondent and it was 4th/5th case filed by the petitioner against the respondent. On merits, respondent did not dispute that petitioner was appointed on 8.10.1983. However, it was submitted that petitioner was not retrenched as alleged by him. In fact, the respondent company was declared sick unit and a order of winding up was passed. The other workers were paid compensation as per the settlement arrived at between management and workers union. The petitioner was also offered to collect the compensation amount but he did not come forward to collect the same. Consequently, respondent prayed for the dismissal of the claim.

4. Petitioner filed rejoinder wherein he expressed his ignorance as to the settlement between the management and workers union and further reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of services petitioner by the respondent w.e.f. 15.9.2001 on completion of more than 240 days of continuous service and without complying the provisions of section 25-N, 25-G and 25-H of Industrial Disputes Act, 1947 is proper and justified?

....OPR

2. If the issue no.1 is not proved to what relief of service benefits including back wages and seniority the petitioner is entitled to?

...OPP

3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1

No.

Issue No. 2

Entitled to lump sum compensation of Rs. Two lakhs only.

Reasons for finding***Issue No. 1 & 2.***

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record, I am of the considered opinion that the services of the petitioner have not been terminated w.e.f. 15.1.2001 as alleged by him. I find sufficient evidence on record to establish that the respondent company was declared sick and winding up order has been passed by the competent authority. As such, there is no question of reinstatement of the petitioner, because, the respondent factory is not running.

11. Although, the petitioner in his testimony as PW-1 has deposed that before his termination he completed 240 days in a calendar year and without any notice and compensation, he was thrown out from the services. At the same time, he has also stated that the factory is closed now and no worker is working in the factory. This statement of petitioner is sufficient to establish that the respondent factory has been closed and no factory is running at present.

12. On behalf of respondent, Shri Khushi Ram Sharma, authorized officer from the respondent stepped into the witness box as RW-1 and his testimony is revealing that the respondent factory was declared sick industry by BIFR (Board for Industrial and Financial Reconstruction). His statement is further revealing that an order was passed for the winding up of the respondent company and as per rehabilitation scheme an agreement Ex. RB was entered and the respondent company was taken over by Shri Prem Chand Goel. He has further deposed that the company was taken over on lease for a period of nine years by Shalimar Wires Industries Ltd. On 10.4.2001, a settlement was arrived at between the management and workers union, as the result, twenty one workers were dispensed with and they were paid due compensation. The settlement deed is Ex. RD.

13. RW-1 Shri Khushi Ram Sharma categorically deposed that the petitioner Brij Lal did not accept the compensation offered to him instead he raised industrial dispute. He has further stated that after 2001, petitioner being a technical man (helper) was gainfully employed. His statement is also revealing that the order of BIFR (Board for Industrial and Financial Reconstruction) Ex. RF as to the winding up of the company was stayed by the appellate Authority vide order Ex. RG. However, Learned Counsel for respondent on 24.7.2012 moved an application to file on record the copy of order dated 15.3.2012 annexure RA passed by the Appellate Authority for Industrial and Financial Reconstruction New Delhi. Said application was allowed and the aforesaid order annexure RA was taken on record. This order is revealing that the order passed by BIFR as to the winding up of the respondent company has been upheld and the appeal is dismissed.

14. Thus, the aforesaid evidence on record established that an order has been passed by the Competent Authority as to the winding up of the respondent company. The other workers were given due compensation and they have left the company. The petitioner himself has admitted this fact. So, legally speaking he is also entitled for compensation.

15. For the aforesaid reasons, it cannot be held that the petitioner has been retrenched or terminated by the respondent in contravention of the provisions of Industrial Disputes Act, 1947. Since, respondent company was declared sick unit and now there is an order of winding up of the respondent company, therefore, petitioner cannot be reinstated as the respondent company is not in working condition and as such he is only entitled for compensation.

16. From the cross-examination of petitioner, it is clear that earlier he was offered compensation to the tune of Rs. 1,51,372/- vide mark C as full & final settlement payment. The respondent has expressed his ignorance as to the said offer.

17. Taking into account all the facts and circumstances of the case, I am of the opinion that petitioner is technical workman, so, it cannot be believed that after 2001, he remained without any job/work or he was not gainfully employed. Thus, he is entitled to lump sum compensation from the respondent company which is assessed to the tune of Rs. two lakhs only.

18. Accordingly, for the aforesaid reasons, issue no.1 is answered in negative. However, the petitioner is entitled to lump sum compensation of Rs. two lakhs, as the result, issue no.2 is answered in affirmative.

Relief.

For the reasons recorded hereinafter, the claim petition is allowed and the petitioner is entitled to lump sum compensation to the tune of Rs. two lakhs only and as such the reference is answered accordingly. Since, there is an order of winding up of the respondent company, therefore, the petitioner is entitled to recover the aforesaid compensation amount from the assets of the respondent company in accordance with law. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 29th day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 58 of 2008.
Instituted on. 20.10.2008.
Decided on 18.8.2012.

Dhanvir Singh S/o Shri Heera Singh R/o Village Khirkhi (Rukhri), P.O. Shambuwala,
Tehsil Nahan District Sirmour, H.P.

...Petitioner.

Vs.

1. The Director Food Civil Supplies and Consumer Affairs, Himachal Pradesh Shimla-9.
2. The District Controller Food Civil Supplies and Consumer Affairs, Sirmour at Nahan.

...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Dhanvir Singh S/o Shri Hira Singh daily wages driver by the 1) The Director, Food Civil Supplies and Consumer Affairs, Himachal Pradesh Shimla-9 2) The District Controller, Food Civil Supplies and Consumer Affairs, Sirmour at Nahan w.e.f. 31.3.1985 and 13.8.1994 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer? ”

2. The petitioner has filed the claim petition stating that he was engaged as a driver on daily wages by the respondents on 17.6.1983 and he worked as such till 31.3.1985 when his services were terminated by the respondents illegally and without following the mandatory provisions of Industrial Disputes Act, 1947. The petitioner filed a Civil Suit at Nahan and also filed an application under Order 39 Rules 1 & 2 C.P.C which was allowed by Ld. Sub Judge, Nahan vide order dated 6.6.1985 and consequently, respondents were restrained from terminating the services of petitioner. The suit of petitioner was dismissed by Ld. Sub Judge, Nahan, so, he filed an appeal which was allowed by Ld. District Judge, Nahan. The respondents preferred R.S.A (Regular Second Appeal) before the Hon'ble High Court which was dismissed. But despite the said order of the Hon'ble High Court, the respondents again illegally terminated the petitioner w.e.f. 13.8.1994 without following the mandatory provisions of Industrial Disputes Act, 1947. The petitioner again filed Civil Suit before Ld. Sub Judge, Nahan which was dismissed on the ground of jurisdiction. Thereafter, petitioner approached H.P Administrative Tribunal against illegal and arbitrary order of the respondents. The case of petitioner was registered as OA No. 569/1994 which was dismissed on the basis of jurisdiction by the Tribunal. Consequently, petitioner filed a demand notice before Labour Inspector-cum-Conciliation Officer, Nahan where the conciliation proceedings failed. Consequently, the present reference was received. The petitioner stated that he completed more than 240 days in a calendar year prior to his illegal termination but no notice was served upon him before his termination as required under section 25-F of Industrial Disputes Act, 1947. Not only this, the respondents also engaged workmen junior to him, hence, violated the principle of “last come first go”. Hence, the present petition was filed with the prayer to set aside the termination orders dated 31.3.1985 and 13.8.1994 respectively and petitioner be reinstated in service with all the consequential benefits including full back wages.

3. The claim of the petitioner was contested by the respondents by filing reply wherein they did not dispute that the petitioner was engaged as daily wagger driver on 17.6.1983. It was stated that the services of petitioner were extended after getting the sanction for three months. The last sanction of engagement of petitioner was given w.e.f. 2.1.1985 to 31.3.1985 when he was terminated w.e.f. 31.3.1985. However, there was break in service after the gap of every 90 days. The respondents did not dispute the filing of civil suit by the petitioner in the Court of Ld. Sub Judge, Nahan and its appeal before Ld. District Judge, Nahan and R.S.A before Hon'ble High court. Thereafter, the services of petitioner were retrenched w.e.f. 20.10.1993 and not from 13.8.1994 after giving a notice under section 25-F of Industrial Disputes Act, 1947 alongwith the compensation of Rs. 11,000/-. The petitioner did not receive the same and refused to take the compensation amount and left the office without any reason. Thereafter, the Bank Draft was sent to the petitioner through register post which he refused to receive. The respondents admitted that again petitioner had filed a civil suit in the Court of Ld. Sub Judge, Nahan against his termination

order dated 18.10.1993 wherein an application under Order 39 Rules 1 & 2 C.P.C was also filed and Ld. Sub Judge, Nahan passed an interim order dated 22.10.1993 to maintain status-quo qua the services of petitioner. However, on 12.5.1994, Ld. Sub Judge, Nahan vacated the aforesaid interim order on the jurisdiction point. The respondents further stated that after the termination of services of petitioner in 1985 a regular driver Shri Ami Chand was appointed in October, 1985. The respondents admitted that petitioner had filed an O.A No. 569/194 before the H.P Administrative Tribunal and interim order was passed on 27.5.1994 which was vacated on 12.8.1994 and the aforesaid O.A was dismissed as withdrawn. The respondents also admitted that consequently, the petitioner had filed demand notice before Labour Inspector-cum-Conciliation Officer, Nahan and thereafter the present reference was filed in this Court. It was further stated that after the vacation of interim order dated 27.5.1994, on 12.8.1994, the notice and compensation in terms of section 25-F of Industrial Disputes Act was again sent to the petitioner through register AD on 4.10.1994 but the same was again received back as the petitioner refused to receive the same. But, the respondents complied with the mandatory provisions of section 25-F, hence, the termination order of petitioner were not illegal. Accordingly, respondents prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied the averments made in the reply by the respondents and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of services of petitioner being daily wages driver by the respondents w.e.f. 31.3.1985 and 13.8.1994 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

...OPP

2. If issue no.1 is proved, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to?

...OPP

3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No. 2 Entitled for lump sum compensation of Rs. Two lakhs.

Relief. Reference answered in negative and the relief is granted to the petitioner per operative part of award.

Reasons for finding

Issue No.1

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner on 31.3.1985 and 13.8.1994 respectively is without complying with the provisions of Industrial Disputes Act, 1947 and consequently unjustified and liable to set aside.

10. From the pleadings of the parties, it is not disputed fact that the petitioner was engaged as a driver on daily wages by the respondents on 17.6.1983 and he remained in service till 31.3.1985 when he was terminated from services. In the light of pleadings as well as evidence on record, it stands established that the petitioner filed a civil suit in the Court of Ld. Sub Judge, Nahan in the year of 1985 and also filed an application for interim order under order 39 rules 1 & 2 C.P.C wherein the respondents were restrained from terminating the services of petitioner. Ex. PB, is the copy of order passed by Ld. Sub Judge, Nahan in the application under order 39 rules 1 & 2 C.P.C. The petitioner Shri Dhanvir Singh stepped into the witness box as PW-1 and deposed all these facts. His testimony is further revealing that the civil suit was dismissed by Ld. Sub Judge, Nahan but he filed an appeal before Ld. District Judge, Nahan which was allowed in his favour and thereafter, respondents preferred R.S.A before Hon'ble H.P. High Court which was dismissed. This fact is not disputed by the respondents as is evident from the cross examination of petitioner Dhanvir Singh. The testimony of petitioner is also revealing that by the order of the Court, he could not be terminated by the respondents and even after 31.3.1985, he remained in service and the termination order dated 31.3.1985 was set aside by the Court. Hence, in the light of aforesaid evidence, it stands established that the termination order of petitioner dated 31.3.1985 is unjustified and illegal and it has been set aside by the Civil Court and the order of Ld. District Judge, Nahan has been affirmed by the Hon'ble H.P High Court in R.S.A.

11. The petitioner has further deposed that again he was terminated by the respondents w.e.f. 13.8.1994 without following the mandatory provisions of Industrial Disputes Act, 1947, consequently, he again filed civil suit before Ld. Sub Judge, Nahan on 13.8.1994. But it is the plea of respondents that the petitioner was terminated on 20.10.1993 and not on 13.8.1994. The termination order Ex. RW-1/L dated 18.10.1993 is revealing that the petitioner was retrenched by the respondents department w.e.f. 20.10.1993.

12. The evidence on record is revealing that after the aforesaid termination order, the petitioner again filed a civil suit before Ld. Sub Judge, 1st Class, Nahan wherein he filed an application under order 39 rules 1 & 2 C.P.C bearing C.M.A No. 88/6 of 1993 instituted on 22.10.1993 and vide copy of order Ex. RW-2/H, Ld. Sub Judge, 1st Class, Nahan had directed the respondents to maintain status-quo qua the services of the petitioner. This order is revealing that the termination order of petitioner could not be implemented till 22.10.1993. So, in-view of the aforesaid order of Ld. Sub Judge, 1st Class, Nahan, the petitioner remained in service even after 20.10.1993. Vide order Ex. RW-2/J dated 12.5.1994 Ld. Sub Judge, 1st Class, Nahan dismissed the C.M.A No. 88/6 of 1993 filed by the petitioner under order 39 rules 1 & 2 C.P.C and vacated the earlier status-quo order. The petition was dismissed for want of jurisdiction of Civil Court. Vide order Ex. RW-2/K dated 30.6.1994, the petitioner had withdrawn his civil suit also.

13. The record is further revealing that thereafter, petitioner filed a petition before Hon'ble State administrative Tribunal and on 27.5.1994, the Tribunal passed a interim order with the direction to allow the petitioner to work as he was working in May, 1994. That means, till 27.5.1994, the petitioner could not be removed from service.

14. However, vide order Ex. RW-2/M dated 12.8.1994, the interim order dated 27.5.1994 was vacated by the Hon'ble State Administrative Tribunal. The petitioner in his testimony has categorically deposed that he remained in service as per the orders of the Court and State Administrative Tribunal from 31.3.1985 to 12.8.1994.

15. Although, the witness of respondents RW-1 Shri Pratap Chand, District Controller, Food & Civil Supplies, Nahan has deposed that the services of petitioner were terminated w.e.f. 20.10.1993 vide copy of order Ex. RW-1/L, but, in-view of aforesaid orders of the Court as well as State Administrative Tribunal, said termination orders could not be implemented and eventually,

the petitioner was terminated w.e.f. 13.8.1994, that is why, in the reference date of termination has been mentioned as 13.8.1994.

16. RW-1 Shri Pratap Chand has deposed that after issuing the termination order of the petitioner, a notice along-with one month's wages and compensation to the tune of Rs. 11,000/- was sent to the petitioner. The copies of notices are Ex. RW-1/N & Ex. RW-1/O.

17. The respondent has examined one another witness RW-2 Shri Jageer Singh, Superintendent from the office of District Controller, Food and Civil Supplies, Nahan and he has deposed that the aforesaid amount of Rs. 11,000/- alongwith termination order of the petitioner were sent to him through registered post vide receipt Ex. RW-2/A. He has further deposed that the petitioner had sent back the Bank Drafts, that means petitioner refused to accept the amount of Rs. 11,000/-. RW-2 has further deposed that thereafter, in the year of 1996, the amount of Bank Draft to the tune of Rs. 11,000/- was deposited in the Government Treasury vide challan Ex. RW-2/C.

18. Thus, the aforesaid evidence of respondent establish that the termination order of the petitioner were w.e.f. 20.10.1993 but those were implemented on 13.8.1994 because of the intervention of the Court and the respondents have complied with the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 by sending notice/termination order of the petitioner to him alongwith his one month's wages and compensation amount to the tune of Rs. 11,000/-. The evidence, on record, established that the petitioner had refused to accept the aforesaid amount which was sent to him through register post but this refusal on the part of petitioner would not make the respondent liable. For the aforesaid reasons, the compliance of section 25-F of Industrial Disputes Act, 1947 was made by the respondents. Section 25-F of Industrial Disputes Act, 1947 reads as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

19. The evidence on record is revealing that the petitioner was engaged on daily wages by the respondents on 17.6.1983 and remained in service till 31.3.1985 and there is break in service after every ninety days. Legally speaking, this break is notional and for the purpose of section 25-F of Industrial Disputes Act, 1947, stated hereinabove, the petitioner completed 240 days in a calendar year prior to his termination on 31.3.1985. To mind, the break of one day was notional break. Here, I am supported by Hon'ble High Court of H.P. in the matter of 2007 LLR 1155.

20. However, for the reasons discussed hereinabove, the respondents have complied with the mandatory provisions contained under section 25-F of Industrial Disputes Act, 1947.

21. At the same time, I am of the view that the evidence on record have established that there is violation of section 25-H of Industrial Disputes Act, 1947 in this case, which reads as under:

“RE-EMPLOYMENT OF RETRENCHED WORKMEN.---Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workmen who offer themselves for reemployment shall have preference over other persons.”

22. In the light of my aforesaid discussion, it stands established that initially petitioner was terminated on 31.3.1985 and thereafter w.e.f. 20.10.1993 but the orders were implemented on 13.8.1994. I find sufficient evidence to establish that after the termination of services of petitioner, respondents engaged other drivers. PW-2, Shri Ami Chand has deposed that he was engaged as a driver by the respondents at Nahan in October, 1985 and he is still in the service. PW-2, Shri Jahid Khan has deposed that he was engaged as a driver by the respondents on 3.8.1998 and worked till 15.1.2001. The petitioner has examined PW-5 Ms. Meena chauhan, Junior Assistant from the office of District Controller, Food and Civil Supplies, Nahan and she has deposed that as per record Shri Jahid Khan was appointed on daily wages as driver and thereafter one Nitin Kumar also drove the vehicle of respondents. She has also deposed that at present there is no driver and the post is lying vacant. So, it stands established on record that new persons were engaged by the respondent after his retrenchment. It was obligatory and mandatory on the part of respondents to give an opportunity to the petitioner and offer him re-employment in preference of other persons in view of section 25-H referred to hereinabove. On this ground, the termination orders of petitioner are unjustified and illegal and consequently, are hereby set aside.

23. Accordingly, for the aforesaid reasons, this issue is decided in favour of the petitioner.

Issue no. 2.

24. For the reasons recorded hereinabove while deciding issue no.1, the termination orders of petitioner are illegal and have been set aside. At the same time, it is relevant to mention that on 18.7.2012, the petitioner filed an affidavit in the Court to the effect that he has already attained the age of 58 years. Meaning thereby, he has attained the age of superannuation and cannot be ordered to be reinstated in service by the respondents. On behalf of petitioner prayer was made to give him the relief of full back wages with other service benefits. After due consideration and keeping in view the facts and circumstances of the case, to my mind the petitioner is out of service for the last 18 years. Before that, he was terminated on 31.3.1985 but remained in service till 12.8.1994 with the intervention of the Court orders. Here the testimony of petitioner PW-1 is relevant. In his cross-examination, he has admitted that he was terminated in 1985 and he filed a civil suit which was dismissed on 3.6.1988. He also admitted that he remained present in the office as per the interim order of the Court but he was without work. This statement on the part of petitioner is revealing that he was only reinstated by the respondents in compliance with the orders of the Civil Court but no work was taken from the petitioner. Hence, it is not a fit case where the full back wages could be awarded to the petitioner.

25. On behalf of petitioner reliance has been made on 2010 (1) Him. L.R (D.B) 537 wherein for the violation of provisions contained under section 25-F of Industrial Disputes Act, 1947 full back wages have been awarded to the workmen. After due consideration, facts in hand are not attracted, therefore, the aforesaid case law is not applicable to the present case. First of all, in our case, there is no violation of section 25-F of Industrial Disputes Act, 1947. Moreover, in the

case before Hon'ble H.P. High Court there were evidence on behalf of workmen that they were unemployed during the period they were disengaged. But in our case, the petitioner could not lead any evidence that after 13.8.1994, he remained unemployed and was not gainfully employed. Consequently, I am of the opinion that the petitioner is not entitled to the back wages, instead he is entitled to compensation.

26. The Hon'ble Supreme Court in case of Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. In case reported in (2009) 15 SCC 327 titled as Jagbir Singh Vs. Haryana State Agricultural Marketing Board it was held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

28. Hence, in the light of aforesaid discussion, petitioner is not entitled to the reinstatement and back wages along-with other service benefits but he is entitled to receive a suitable compensation from the respondents. Taking into account facts and circumstances of the case, the ends of justice would meet if the compensation in lieu of back wages and other service benefits is awarded to the petitioner. I am of the opinion that compensation to the tune of Rs. two lakhs only is appropriate, just and equitable and the same is hereby awarded to the petitioner. Accordingly, this issue is decided in favour of petitioner.

Relief.

For the reasons recorded hereinabove, the claim petition is allowed and the reference is hereby answered in negative. The termination of services of petitioner by the respondents w.e.f. 31.3.1985 and 13.8.1994 is hereby declared illegal and not justified. However, instead of reinstatement, back wages, seniority and other service benefits, the petitioner is held entitled to the compensation of Rs. two lakhs only which shall be paid by the respondents within two months from today failing which the same shall carry interest @ 9% per annum. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18th day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 13 of 2002.

Instituted on. 17.1.2002

Decided on. 31.8.2012.

Pushpinder Singh S/o Shri Karam Chand R/o Village and P.O Panjehra, Tehsil Nalagarh, District Solan, H.P.

...Petitioner.

Vs.

M/s Shivalik Hatcheries Unit-II, VPO Panjehra, Tehsil Nalagarh, District Solan, H.P through its Managing Director.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : J.C Bhardwaj , AR.

For respondent : Shri Rajeev Shasrma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the enquiry which caused the termination of the services of Shri Pushpinder Singh S/o Shri Karam Chand w.e.f. 20.10.2000 by the Managing Director, M/s Shivalik Hatcheries Unit-II, Village and Post Office Panjehra Tehsil Nalagarh, District Solan, H.P is fair and justified? If not, what relief of service benefits including continuity in service and amount of compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was workman under the respondent and remained as such in the employment till 20.10.2007, when his services were dismissed without following the principles of natural justice. The petitioner challenged the termination order being illegal and out-come of partial domestic enquiry. In fact, the petitioner was active in trade union activities, so, the respondent was prejudiced against him. A story was fabricated against the petitioner and there was conspiracy on behalf of management, as the result, a false criminal case was registered against the petitioner. The defective chargesheet was served upon the petitioner. Before domestic enquiry, the management did not supply list of witnesses as well as documents relied upon by the management. The enquiry officer did not adopt the procedure established under law. The entire enquiry proceedings as well as enquiry report were challenged by the petitioner being violative of principles of natural justice. The witnesses examined by the management were doubtful. The enquiry officer did not explain the charges properly to the petitioner, and due opportunity to defend himself was not given to the petitioner. Before imposing extreme penalty of dismissal, the service record of petitioner was not considered and appropriate time was not given to him to reply the show cause notice. Hence, petitioner prayed to set aside the enquiry report and his dismissal order and respondent be directed to reinstate the petitioner in service with seniority and full back wages along-with other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein respondent took preliminary objections as to maintainability, suppression of material facts by the petitioner and want of legal reference. Respondent also stated that the petitioner was gainfully

employed and working with some other concern and earning handsome amount. On merits, the respondent stated that the petitioner did not reveal the true facts. The petitioner along with other workers was on sanctioned leave on 8.5.2000, when he along-with other workers reached the premises of factory of respondent at 2.00 PM. There was altercation between petitioner and other workers and the security guards. At about 4.00 PM, the petitioner and other workers without any permission entered into the factory and gave severe beatings to the supervisory staff as well as senior officers of the factory. Shri Faujdar Singh, Assistant Manager sustained fracture in his arm. The petitioner along-with other workers also damaged the gate and other property of the factory and also did not allow the injured to be taken to the hospital. On 6.6.2000, at 6.00 PM, the petitioner along-with other outsiders assembled outside the main gate of the factory and raised slogans against the officers of the respondent factory and they violated the orders of Ld. Sub Judge, 1st Class, Nalagarh dated 8.5.2000 vide which the petitioners were restrained to do said unlawful activities. The petitioner alongwith other workers pelted stones on tempo No. HP 12-2463 and damaged it. Due to said misconduct, the respondent management chargesheeted the petitioner along-with other workers and a proper and fair domestic enquiry was conducted against the petitioner wherein the charges of misconduct were proved. Proper and due opportunity was given to the petitioner to defend himself. The petitioner cross examined the management witnesses and after management witnesses, the petitioner was given opportunity to produce his witnesses in defence. Before dismissing petitioner, a show cause notice was served upon him. The matter was also reported to the Police. There was no violation of principles of natural justice during the enquiry. The guilt of petitioner could not be ignored, hence, the punishment of dismissal was awarded. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the enquiry which caused termination of the petitioner w.e.f 20.10.2000 by the respondent is fair and justified?

...OPR

2. If the issue no.1 is not proved what relief of service benefits including continuity of service, back wages and amount of compensation is entitled to?

...OPP

3. Whether the claim of petitioner is not maintainable in the present form as alleged?

...OPR

4. Whether the petitioner has not come to the Court with clean hands and has concealed the material facts as alleged?

...OPR

5. Whether the reference is bad in law and has not been made by the competent authority as alleged?

...OPR

6. Whether the petitioner is gainfully employed, if so to what effect?

...OPR

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3.	No.
Issue No.4	No.
Issue No.5	No.
Issue No.6	Yes.

Reasons for finding

Issue No. 1

9. After hearing both the parties and going through the record, I am of the considered opinion that the termination of petitioner w.e.f. 20.10.2000 by the respondent is not justified and liable to set aside, for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is undisputed that the petitioner was a workman engaged by the respondent and he was terminated w.e.f. 20.10.2000. As per respondent, petitioner along-with other workmen assembled outside the factory of respondent on 8.5.2000 and 6.6.2000 respectively and damaged the gate as well as other property of respondent and also caused injuries to the officials as well as officers of the respondent factory by beating them. One Shri Faujdar Singh, Assist Manager sustained fracture in his arm. For the said misconduct, petitioner was charge-sheeted and a domestic enquiry was conducted against him in which the charges against the petitioner were proved. Consequently, a show cause notice was served upon the petitioner and finally he was terminated w.e.f. 20.10.2000.

11. The main question for determination before this Court is whether the domestic enquiry conducted against the petitioner is fair and justified. Taking into account the evidence of both the parties and other material on record, to my mind, the domestic enquiry is not sustainable under law as the principles of natural justice have been violated.

12. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts stated by him in the claim petition. On the other hand, respondent examined six witnesses. RW-1, Rajinder Singh, Advocate is the enquiry officer, RW-2, Harbhajan Singh, the Deputy Manager of respondent, RW-3 Milap Chand, the Assistant Manager, RW-4 Mukesh Chand, Labour Inspector, Nalagarh, RW-5 Faujdar Singh, the then Assistant Manager who sustained injuries in the occurrence in question and PW-6 Shri Susheel Kumar Singh is the Assistant Manager Venkys India Ltd. Allahabad. All these witnesses deposed that the petitioner alongwith other workers entered into the premises of respondent factory on 8.5.2000 at 4.00 PM and quarreled with staff members and damaged the property of factory and gave beatings to the staff members with "Dandas" as the result, Shri Faujdar Singh sustained fracture in his arm. For this occurrence, the petitioner and other workmen were chargesheeted and domestic enquiries were conducted against them wherein they were held guilty. The petitioner has challenged the domestic enquiry being violative of principles of natural justice. The copy of enquiry report is Ex. R-4 which I have carefully perused. The most

important witness in this case is RW-1 Shri Rajinder Singh, Advocate who was appointed as an enquiry officer and conducted the domestic enquiry vide his report Ex. R-4. In said report, it has been mentioned that the enquiry officer apprised the delinquent (petitioner) about the procedure to be adopted. Both the parties were apprised to produce their respective evidence along-with witnesses.

13. The cross examination of RW-1 is important wherein initially he has stated that all the documents were supplied to the worker well before starting of the enquiry but he again stated that some documents were supplied before enquiry whereas some were supplied before cross examination of the witnesses. Here, the cross examination of petitioner Pushpender Singh is relevant wherein he admitted that on 3.9.2000, he received copies of Ex. P-7 to Ex. P-12. He has further admitted that on 3.9.2000, the enquiry stood closed. These facts are sufficient to establish that the documents Ex. P-7 to Ex. P-12 were supplied to the petitioner during the course of evidence in domestic enquiry for the first time on 3.9.2000 when the enquiry was closed. That means said documents were no earlier supplied to the petitioner before the start of domestic enquiry. It established that at the time of service of chargesheet, said documents were not supplied to the petitioner. It has caused serious prejudice to the petitioner, because, he could not defend himself properly and effectively in the absence of documents which were relied upon and produced in evidence by the management. I am of the opinion that a reasonable opportunity to defend the petitioner was denied. On this ground, the enquiry report is not justified and liable to set aside. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-I LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004**.

14. On behalf of respondent, RW-4 Shri Mukesh Chand Labour inspector, Nalagarh was also examined who has deposed that he had received demand notice of the workers of respondent factory dated 2.5.2000, copy of which is Ex. R-A along-with other demand notice of strike dated 2.5.2000 which is Ex. RB and the conciliation was fixed and notice of conciliation was issued which is Ex. RC. Ex. RC is revealing that conciliation was fixed for 23.5.2000 upon the demand notice. The crossexamination of this witness is revealing that one demand notice dated 24.4.2000 was also received and no action on this notice was taken. There is nothing in evidence what happened to said demand notice whether that demand notice was finally decided or not. The petitioner in para 4 of his affidavit has categorically deposed that the demand notice was not considered and the members of the union were compelled to resort to agitation. This evidence on record established that when the services of petitioner were terminated w.e.f. 20.10.2000, the demand notice was pending. In the light of these facts, section 33 of Industrial Disputes Act, 1947, is applicable which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

15. So, it was mandatory for the respondent to obtain the prior permission/approval from the competent authority before terminating the petitioner from service. Since there is violation of section 33 of Industrial Disputes Act, 1947, therefore, on this ground also the termination orders of petitioner is not sustainable.

16. On behalf of petitioner Shri J.C Bhardwaj, AR has argued that qua occurrence in question a criminal case was registered against the petitioner and other workers in this after conducting trial, the Criminal Court has acquitted the petitioner, therefore, he prayed that in the light of said acquittal order, the petitioner could not be held guilty in domestic enquiry.

17. After due consideration, I am not in agreement with the aforesaid submission made by Shri Bhardwaj on behalf of petitioner. To my mind, in a criminal case the mode of proof is strict and the standard of proof is higher than that of in the domestic enquiry. In the domestic enquiry the matter is decided on the preponderance of probabilities whereas in a criminal trial the proof is required beyond the scope of all reasonable doubts, therefore, the nature and scope of both is different. The judgement of criminal proceedings cannot be made a base to set aside the domestic enquiry report. Here, Ld. Counsel for respondent rightly relied upon law laid down by Hon'ble Supreme Court in the matter of **2012 LLR 8**.

18. Accordingly, for the aforesaid reasons, this issue is decided against the respondent.

Issue No.2 & 6.

19. Both these issues are interlinked and can be disposed of by a single finding. For the reasons recorded hereinabove while discussing issue no.1, the termination order of petitioner w.e.f. 20.10.2000 by the respondent is not justified being illegal having been passed on the report of domestic enquiry in which the principle of natural justice were violated. Consequently, the petitioner is entitled to be reinstated in service by the respondent with seniority and continuity. However, taking into account all facts and circumstances of the case, the petitioner is not entitled for the back wages and compensation. It cannot be believed that for the last about ten years, the petitioner is not gainfully employed. Although, the petitioner has denied that he is gainfully employed during this period but the version of petitioner cannot be accepted. The respondent has alleged that the petitioner is having agricultural income and apart from this, he has been engaged in some other factory. Although, there is no specific evidence in this regard but I find substance in the

said plea taken by the respondent. The petitioner cannot remain without any job for a period of about ten years.

20. Hence, in the light of facts and circumstances of the case, the petitioner is not entitled to back wages and compensation. He is only entitled to be reinstated in service with the benefit of seniority and continuity in service. Hence, issue No.2 is partly decided in favour of petitioner whereas issue no.6 is decided in favour of respondent.

Issue No. 3.

21. There is nothing on record to show that the petition is not maintainable in the present form. Accordingly, this issue is decided against the respondent.

Issue No. 4.

22. I do not find any evidence on record to suggest that the petitioner has not come to the Court with clean hands and he has suppressed and concealed material facts. The petitioner has categorically challenged the domestic enquiry. So, in the absence of any specific evidence on this issue, it is also decided against the respondent.

Issue No. 5.

23. From the careful perusal of record, the reference has been made by the competent authority legally and in accordance with law. Hence, this issue is also decided against the respondent.

Relief.

For the reasons recorded hereinafter, the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without holding proper and fair enquiry. As the result, the termination order of petitioner w.e.f. 20.10.2000 is hereby set aside. Consequently, the petitioner is entitled to be reinstated in service on the same terms and conditions with the benefits of seniority and continuity in service but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 63 of 2008.
Instituted on. 28.11.2008.
Decided on 18.8.2012.

Ram Nath Arora S/o Shri Som Nath R/o House No. 12, Upper Mohalla Kalka, Haryana.

...Petitioner.

Vs.

M/s Purolator India Ltd., Parwanoo, District Solan, H.P., through its Managing Director.

...Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advoacte

For respondent : Shri Dushyant Dadwal, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether dismissal orders of the services of Shri Ram Nath Arora s/o Shri Som Nath Shah w.e.f. 24.4.2007 by the Managing Director, M/s Purolator India Ltd., Parwanoo, District Solan H.P without observing the principle of natural justice as alleged by the worker and without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, amount of compensation, back wages and seniority the aggrieved workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was engaged as workman by the respondent company in November, 1977 and he worked till 26.4.2007. The work and conduct of petitioner remained upto the mark. On 25.8.2006, the respondent issued a show cause notice to the petitioner along-with one Shri Roop Chand Mandyal. The petitioner filed reply to the said show cause notice. However, without verifying the true facts, vide office order dated 29.8.2006, the petitioner was put under suspension. From the perusal of the suspension order, it was clear that the petitioner was suspended on the complaint of Shri Roop Chand Mandyal, whereas initially one common show cause notice was issued to the petitioner along-with Shri Roop Chand Mandyal. The petitioner applied for the copy of complaint filed by Shri Roop Chand Mandyal but in vain. Thereafter, the chargesheet was served upon the petitioner and initially respondent appointed one Shri Vinay Aggerwal as an enquiry officer. However, subsequently Shri Sandeep Kaushik, Advocate was appointed as an enquiry officer. The petitioner requested the respondent to appoint enquiry officer from the company itself but respondent refused to do so. However, again the respondent changed the enquiry officer and appointed Sri Sudheer Chauhan, Advocate from outside as an enquiry officer. The domestic enquiry was conducted in a partial manner as the enquiry officer started favouring the respondent from the very beginning of the enquiry. The allegations made in the chargesheet dated 21.9.2006, were not mentioned in the show cause notice. Moreover, there were no detailed allegations in the chargesheet also, whereas, in domestic enquiry, the complaint of Shri Roop Chand Mandyal was produced for the first time containing allegations which were not mentioned in the chargesheet. Consequently, petitioner challenged the domestic enquiry on the ground of violation of principles of natural justice. After the enquiry, the respondent dismissed petitioner from service vide letter dated 5.4.2007. Subsequently, said dismissal order was withdrawn vide letter dated 20.4.2007 and finally the respondent again passed dismissal order of the petitioner on 24.4.2007. Petitioner further stated that the respondent had filed an application under section 33-(2)(b) of Industrial Disputes Act, 1947 which was dismissed on 7.1.2008. Thereafter, no fresh application was filed by the respondent to obtain the necessary approval. Hence, the dismissal order of petitioner was against the provisions of Industrial Disputes Act, 1947.

Consequently, petitioner prayed to set aside the dismissal order and to reinstate him in service with full back wages, seniority etc.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability, want of fair and proper domestic enquiry conducted against the petitioner, act and conduct of the petitioner and adamant attitude of the petitioner were taken. On merits, the respondent admitted that the petitioner was engaged in the year of 1977 and he was dismissed in April, 2007. As per respondent, the petitioner had misbehaved with his colleague and used derogatory language against the family members of his colleague, therefore, he was chargesheeted and a proper, fair and legal domestic enquiry was conducted against the petitioner wherein the charges against the petitioner were duly proved. The respondent stated that it was not the only and first instance of the complaint against the petitioner, earlier also, he was in the habit of committing such mistake and on every time a lenient view was taken on the apology of the petitioner. Therefore, the respondent prayed that petitioner did not deserve any lenient view so he was rightly dismissed from the service on 24.4.2007. Respondent admitted that earlier an application under section 33-(2)(b) of Industrial Disputes act was filed before this Court which was dismissed in default. The respondent had intended to bring to the notice of this Court about the fact of domestic enquiry and its report for the approval of the Court. But petitioner could not get benefit of said dismissal order of the application. It was further stated that the domestic enquiry against the petitioner was conducted in a fair manner after giving due opportunity to the petitioner to participate in the enquiry and petitioner remained present and also cross examined the witnesses. Hence, in the light of domestic enquiry report, the petitioner was rightly dismissed from the service. Therefore, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the dismissal order of the services of the petitioner w.e.f. 24.4.2007 by the respondent without observing the principle of natural justice and without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified as alleged?

. .OPR

2. If issue no.1 is not proved, to what relief of service benefits, amount of compensation, back wages and seniority, the petitioner is entitled to?

. .OPP

3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully. 8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Entitled to reinstatement with seniority and continuity in service but without back wages.
Relief.	Reference answered in negative and the relief is granted to the petitioner per operative part of award.

Reasons for finding

Issue No.1.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the dismissal order of the services of petitioner w.e.f. 24.4.2007 is not sustainable under law as the domestic enquiry conducted against the petitioner was against the principles of natural justice and further the dismissal order were passed without complying the provisions of Industrial Disputes Act, 1947.

10. It is undisputed fact that the petitioner was engaged in service by the respondent in November, 1977 and he was dismissed from the services w.e.f. 24.4.2007, in this regard notice Ex. PW-3/B was served upon the petitioner. It is also not disputed fact that a domestic enquiry was conducted against the petitioner for misbehaving with his colleague. The domestic enquiry against the petitioner was conducted upon the complaint of Shri Roop Chand Mandyal. He was examined by the respondent before this Court as RW-2. In order to prove these facts, respondent has examined other witnesses also, RW-1 Shri Sudheer Chauhan, Enquiry Officer, RW-3 Ms. Rozi Atoria, Senior Executive (HR) in respondent company who proved the fact that on the dismissal of petitioner he was paid full & final payment vide letter Ex. RW-3/A. She also tendered in evidence the dismissal order of the petitioner Ex. RW-3/B. The respondent also examined one other witness Shri Balam Ram who was inadvertently examined as PW-3, who stated that the petitioner had misbehaved with his colleague Shri Roop Chand Mandyal and used abusive and derogatory language against the wife, sister and mother of Shri Roop Chand Mandyal.

11. It is the case of the petitioner that there was violation of principles of natural justice in holding domestic enquiry against him. After due consideration, I find substance in the plea raised by the petitioner. The petitioner has examined himself as PW-1 as well as other witnesses PW-2 Shri Sunil Kumar, PW-3 Shri Dheeraj Dhiman, PW-4 Shri N.K Jha and PW-5 Shri Prakash in order to prove that in-fact petitioner did not misbehave with Shri Roop Chand Mandyal as alleged by the respondent.

12. It is the allegation against the petitioner that on 23.8.2006, while on duty, he abused Shri Roop Chand Mandyal and used abusive as well as derogatory language against the wife, sister and mother of Shri Roop Chand Mandyal. As per record, Shri Roop Chand Mandyal had filed a complaint Ex. RW-2/A against the petitioner on 23.8.2006. In the complaint, Shri Roop Chand Mandyal had levelled detailed allegations against the petitioner regarding the use of abusive and derogatory language against his wife, sister and mother. The record is revealing that on 25.8.2006, a show cause notice Ex. PW-1/J was served upon the petitioner alongwith Shri Roop Chand Mandyal. This show cause notice is revealing that both of them had created indiscipline in the plant by abusing each other and using bad language on the shop floor at 4:30 PM on 23.8.2006. Both of them were asked to give explanation of their unexpected misbehavior, failing which disciplinary action will be taken against them. There is nothing on record to show that what disciplinary action was taken against Shri Roop Chand Mandyal. If he was also served a common show cause notice then, I failed to understand why no disciplinary action was taken against him, especially when the show cause notice Ex. PW-1/J is revealing that both (petitioner and Roop Chand Mandyal) had created indiscipline by abusing each other and using bad language. This show cause notice is sufficient to suggest that Shri Roop Chand Mandyal had also created indiscipline by abusing Shri Ram Nath Arora (petitioner) then why no action was taken against Shri Roop Chand Mandyal. Shri Roop Chand Mandyal was examined by respondent as RW-2 and in his cross examination he has admitted that he was served a common/joint show cause notice Ex. PW-1/J. He has stated that a warning was issued to him upon the said show cause notice. If the respondent could let-off Shri

Roop Chand Mandyal after issuing a warning then why petitioner was chargesheeted and a domestic enquiry was conducted against him. This conduct on the part of respondent is reflecting pre-conceived biasness against the petitioner.

13. Ex. PW-1/L is the letter issued to the petitioner dated 29.8.2006 vide which petitioner was informed that his reply was found unsatisfactory and a decision was taken to conduct a domestic enquiry and the petitioner was placed under immediate suspension. As discussed hereinabove, the petitioner was chargesheeted upon the written complaint Ex. RW-2/A of Shri Roop Chand Mandyal. The allegations made in the complaint Ex. RW-2/A have not been mentioned in the show cause notice Ex. PW-1/J, reply of which was filed by the petitioner vide Ex. PW-1/K. Then, I failed to understand how the reply of petitioner was found unsatisfactory by the respondent because no opportunity was given to petitioner to give his explanation regarding the allegations made by Shri Roop Chand Mandyal in his complaint Ex. RW-2/A. As the result, the decision of respondent to hold a domestic enquiry against the petitioner and to put him under suspension is outcome of biasness against the petitioner.

14. Ex. PW-1/O, is the chargesheet dated 21.9.2006 which was framed and served upon the petitioner. This chargesheet is revealing that a complaint was received against the petitioner on 23.8.2006 from Mr. Roop Chand Mandyal wherein Shri Mandyal had mentioned that petitioner had uttered derogatory words against his family members and petitioner had also misbehaved with the Manager of the company. It was also alleged that petitioner had used abusive and filthy language against his coemployee and subsequently on 25.8.2006 petitioner had tried to impute false allegations against Shri Roop Chand Mandyal. It is pertinent to mention that there is nothing specific in this chargesheet about the actual filthy language allegedly used by the petitioner and the actual derogatory words used by the petitioner against the family members of Shri Roop Chand Mandyal, whereas, in the complaint Ex. PW-1/J, Shri Roop Chand Mandyal had mentioned the actual language and derogatory words, which the petitioner had allegedly used. The complaint Ex. PW-1/J, was filed by Shri Roop Chand Mandyal against the petitioner on 25.8.2006, whereas the chargesheet Ex. PW-1/A was served upon the petitioner on 21.9.2006. So, the actual words and language used in the complaint Ex. PW-1/J could be easily mentioned in the chargesheet. By not mentioning the same in the chargesheet, the petitioner was unable to understand the nature of allegations against him. So, he was not in a position to defend himself properly and effectively during the course of domestic enquiry. Meaning thereby, the right of the petitioner of being heard and to defend himself was infringed and this is nothing but violation of principle of natural justice. The record is also revealing that vide letter Ex. PW-1/M dated 3.10.2006, petitioner had applied to supply him the copy of written complaint of Shri Roop Chand Mandyal but the same was not supplied to him.

15. Ex. RC is the enquiry report which was prepared by the enquiry officer on the conclusion of domestic enquiry. This report is revealing that on behalf of management/respondent the list of documents was filed which includes the written complaint of Shri Roop Chand Mandyal dated 23.8.2006 which is Ex. PW-1/J. It stands established on record that said complaint was produced for the first time during domestic enquiry and it was not supplied to the petitioner earlier. The chargesheet against the petitioner was based on the said complaint of Shri Roop Chand Mandyal but the allegations mentioned in the complaint were not mentioned in the chargesheet. On the top of it, no show cause notice was served upon the petitioner regarding the allegations made in the written complaint Ex. PW-1/J. To my mind, this document (complaint Ex. PW-1/J) is most important document of the management and copy of it was not supplied to the petitioner before domestic enquiry, therefore, it has resulted into the violation of principles of natural justice. On this ground, the domestic enquiry is not sustainable under law. The final enquiry report Ex. PC is liable to be set aside. Here, I am also supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-I LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004.**

16. The record is further revealing that earlier on behalf of petitioner an application under section 33-2(b) of Industrial Disputes Act, 1947 was filed before this Court, the copy of that application is Ex. PW-1/z-2 and vide copy of order Ex. PW-1/w dated 7.1.2008, said application filed by the respondent was dismissed in default by this Court. Here, section 33-2(b) of Industrial Disputes Act, 1947 is relevant which reads as under:

- “(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--
- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

17. This provision of law makes it clear that before passing a dismissal order against any workman, the employer has to pay wages of one month's and has to move an application to the authority for approval of dismissal of the workman. Since, the earlier application filed by the respondent under section 33-2(b) was dismissed, therefore, the respondent was under the legal obligation to move fresh application for the approval of the dismissal of the petitioner.

18. On behalf of the respondent, it was argued that there was no legal requirement for the approval under section 33-2(b) of Industrial Disputes Act, 1947 as at that time when the earlier application was filed, the domestic enquiry against the petitioner had not started. The copy of the application filed by the respondent is Ex. PW-1/z-2 dated 24.7.2007, whereas Ex. RC is the copy of enquiry report dated 9.2.2007. That means the domestic enquiry was over and the final report had come against the petitioner when the earlier application under section 33-2(b) was filed by the respondent. Moreover, in the said application, the respondent had mentioned that chargesheet was served upon the petitioner and a domestic enquiry was conducted and enquiry officer had given his final report against the petitioner. In para 8 of the application it was mentioned that earlier the petitioner was dismissed on 5.4.2007 but there was no approval under section 33-2(b) of Industrial Disputes Act, 1947, thus, the dismissal order of petitioner was withdrawn on 20.4.2007.

19. Hence, in the light of the aforesaid established facts it is proved that till date there is no approval under section 33-2(b) of Industrial Disputes Act, 1947. In the absence of same, the dismissal order of petitioner from service issued by the respondent is not sustainable under law and the same is hereby set aside.

20. On behalf of respondent reliance was made on (2006)2 Supreme Court Cases 269 and (2010) 11 Supreme Court Cases 233, but for the reasons discussed hereinabove, the facts of the case are not attracted. As in our case there was violation of principles of natural justice at the time of domestic enquiry and further the provisions of section 33-2(b) of Industrial Disputes Act, 1947 were not complied with by the respondent before dismissing the petitioner from service.

21. Hence, in the light of my aforesaid discussion, this issue is decided against the respondent.

Issue No. 2.

22. For the reasons recorded hereinabove while deciding issue No.1, the dismissal order of petitioner dated 24.4.2007 is hereby set aside and the petitioner is hereby ordered to be reinstated in service on the same terms and conditions in service with continuity and seniority. However, keeping in view the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this issue is decided in favour of petitioner.

Relief.

For the reasons recorded hereinafter, the claim of the petitioner is allowed and the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without observing the principles of natural justice and without complying with the provisions of Industrial Disputes Act, 1947. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18th day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref.11/2012
09.08.2012

Employees Union Vs. M/s Cosmo Ferrities Ltd Jabli

9.8.2012

Present: Shri Sanjay Kumar, General Secretary of petitioner union.
Shri Rahul Mahajan, Advocate for respondent.

Today, General Secretary of Cosmo Employees Union disclosed that parties have amicably settled the dispute. To this effect, written compromise Ex. PA filed and prayed not to file the claim and to decide the reference accordingly. His statement recorded.

In the light of his statement as well as written compromise Ex. PA, this reference is decided accordingly. Let the award is hereby passed in favour of written compromise Ex. PA which shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
9/8/2012.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 40/2008

Sh Dayand & others V/s Dy Director of Education Shimla.

27.8.2012

Present:- Sh Parkash Chand Advocate for petitioner.
Shri Jagdish Kanwar, Dy. DA for respondent.

Learned counsel for petitioner disclosed that all the petitioners have been regularised by the respondents vide office order No. Shiksh-Shimla(1-4)B-6/2005-12 Loose, copy of which he placed on record vide Ex.P-1 in view of said notification, Ld. Counsel expressed not to press the claim petition and to dispose of the reference accordingly. Statement of Learned Counsel on behalf of petitioners recorded.

I have perused the contents of Ex.P-1 vide which the petitioners have been regularised in service by the respondents, hence, in view of statement of Ld. Counsel for petitioners, the claim petition stands dismissed. As the result, the reference is answered accordingly and award is hereby passed in view of statement of Ld. Counsel as well notification Ex.P-1. The Ex.P-1 shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File after completion, be consigned to records.

Announced
27.8.2012

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Ref.No.71/2010**Smt Kamlesh Devi V/s M/s Bhurji Super Tele Industries, Parwanoo.**

9.8.2012.

Present: Petitioner with Shri Ashwani Kumar, Advocate.
Shri Alok Bhardwaj, Advocate for respondent.

Today, the parties have entered into a settlement vide which the petitioner received a cheque of Rs. 35,000/- (Thirty five thousand only) from the respondent as full and final settlement and to agree not to press her claim. She prayed to pass the award accordingly. Her statement is recorded.

In the light of statement of the petitioner, this reference stands amicably settled and award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
9/8/2012.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 19 of 2008.

Instituted on. 11.4.2008.

Decided on 14.8.2012.

Sada Ram S/o Shri Nikku Ram, R/o Village Bodani P.O Chhachhi, Tehsil Nalagarh,
District Solan, H.P.

...Petitioner.

Vs.

1. The Divisional Forest Officer, Division Nalagarh, District Solan, H.P.
2. The Secretary Forest, Himachal Pradesh Shimla, H.P.

...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.S Parmar, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the action of the employer, Divisional Forest Officer, Nalagarh District Solan not to regularize the services of shri Sada Ram S/o Shri Niku Ram after completion of 10 years of regular service on 31.12.2001 is legal and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he is permanent resident of Village Dodani, P.O Chhachhi, Tehsil Nalagarh, District Solan, H.P and joined Forest Department in November, 1984 as beldar at Theuda beet. He rendered regular and continuous service up till 28.2.2006 with a minimum of 240 days in every calendar year. Initially, petitioner was appointed as a beldar but thereafter, he rendered his services as Mali as well as Mate. On 1.11.1994, the petitioner had completed ten years of continuous service, so, he was eligible to be regularised. He requested the officials of the department and they assured that petitioner would be regularised soon. On 27.2.2006, petitioner received a letter from Range Officer, Ramsheshar division Nalagarh intimating the termination of his services with the remarks that he had attained the age of superannuation. The petitioner rendered services for about twenty two years but he was not regularised after the completion of ten years. In the year 1999, the Himachal Pradesh Government reduced the required years of service from ten years to eight years for regularisation. Hence, petitioner prayed that he was entitled to be regularised from 1.11.1994 when he completed ten years of service with all the consequential benefits. In the claim petition, the petitioner also filed the details of monitory benefits for which he was eligible after the regularisation of services.

3. The respondents contested the claim of the petitioner and filed the reply wherein preliminary objection was taken that petitioner completed 240 working days in each calendar year w.e.f. 1992 onwards. He completed eight years of continuous service in the year of 1999 and as per Government instructions, the daily wagers who have completed eight years of continuous service on 31.3.2000 would be eligible for regularization, therefore, the case of petitioner was submitted to Conservator of Forest, Bilaspur. The respondent also stated that as per the instructions of Himachal

Pradesh Government vide letter no. Fin-1C(7)-1/99 dated 24.12.1999, it was clarified that a person would become eligible for regularisation after completing eight years of service but the regularization was subject to the availability of post. Keeping in-view of the said instructions, the seniority list of all daily wagers of Forest Department was compiled and was conveyed for the approval to Principal Chief Conservator, Forest, Shimla for the regularization of 200 daily wagers. Vide letter dated 6.1.2003, 46 daily wagers were regularised in Bilaspur Forest Circle. The name of petitioner was not in the said list. The services of petitioner could not be regularised in the absence of availability of post as well as persons senior to him were regularised. However, since the petitioner has attained the age of superannuation on 23.2.2006, so, he was disengaged by the department vide letter dated 23.2.2006. On merits in reply, the respondents admitted that petitioner joined the Forest Department in 1984 and rendered his services till 28.2.2006. The petitioner completed ten years of continuous service with a minimum of 240 days in a calendar year in the year of 2001. For the reasons discussed earlier, the services of petitioner could not be regularised for want of availability of post as well as seniority. Consequently, respondents prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied the averments made in the reply by the respondents and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the action of respondents in not regularizing the services of petitioner is illegal and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?

. .OPP.

11. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No.2 Entitled for all the service benefits including wages/salary as a regular employee and consequential benefits.

Relief. Reference answered in Negative and the relief is granted to the petitioner per operative part of award.

Reasons for finding

Issue No.1

9. After hearing both the parties and going through the record carefully, it is not disputed fact that the petitioner was engaged by the respondent Forest Department in the year of 1984 as daily wager. The petitioner when stepped into the witness box as PW-1 has stated that he completed continuous service with minimum 240 days in every calendar year till February, 2008,

when he was disengaged. He has further deposed that he completed eight years of continuous service in the year of 2000. So, he prayed that he should be regularised w.e.f. 2000.

10. From the pleadings of the parties, there is no denial of the fact that earlier the daily waged workers having ten years of continuous service with minimum 240 days in a calendar year were eligible for regularization and vide letter Ex. RB, the Government of Himachal Pradesh reduced the minimum ten years of continuous service to eight years of continuous service with minimum of 240 days in a calendar year. Ex. RB is further revealing that the completions of eight years should be as on 31.3.2000. Therefore, we have to see whether the case of petitioner falls within the ambit of instructions mentioned in Ex. RB.

11. Ex. RA is the copy of mandays chart of the petitioner revealing that he joined the respondent in 1984 but till 1991, he did not complete 240 days in a calendar year. It was only in 1992 when he completed 278 days and thereafter, till the year of 2000 in every year, the petitioner completed minimum 240 days in a calendar year. So, petitioner completed more than eight years of continuous service as daily wager with minimum 240 days in a calendar year till 31.3.2000 and as per Government instructions envisaged in Ex. RB, petitioner became eligible for regularization on 31.3.2000.

12. As per respondents, the services of petitioner were to be regularised in view of seniority list as well as availability of the post. But Ex. RB does not mention any such condition that the daily wager would be regularised as per the seniority list as well as availability of post.

13. On behalf of respondents, RW-1 Shri Roop Lal, Range Officer was examined who admitted the regularization policy of State Government vide Ex. RB. His testimony is revealing that the case of petitioner for regularization was submitted to Conservatory of Forest, Bilaspur and further forwarded to Principal Chief Conservator of Forest vide letter Ex. RD along-with consolidated list of daily waged workers vide Ex. RPX. This witness has further deposed that vide letter Ex. RF-1 and letter Ex. RG 46 daily wagers were regularised but the name of petitioner was not mentioned in the aforesaid list. He has further stated though petitioner was eligible for regularization but could not be regularised for want of post and seniority.

14. For the reasons discussed hereinabove, this testimony of RW-1 cannot be accepted as the regularization policy Ex. RB does not mention any such prerequisite condition for the regularization of a daily wager who has completed eight years of continuous service with minimum 240 days in a calendar year.

15. Hon'ble High Court of Himachal Pradesh in the matter of 2011 (2) Him. LR- 673 has held that a daily wager who has completed ten years of continuous service with 240 days in each calendar year was required to be regularised. Hence, the petitioner is also eligible to regularization on 31.3.2000. Accordingly, for the aforesaid reasons, the action of respondent not to regularise the services of petitioner is illegal and unjustified. Hence, issue no.1 is decided in favour of the petitioner.

Issue No. 2.

16. For the reasons recorded hereinabove while deciding issue No.1, the petitioner was eligible for regularization on 31.3.2000 and as the result, he would be deemed to have retired from the regular Government service in February, 2006 after attaining the age of superannuation. So, the petitioner is entitled for all the service benefits including wages/salary as a regular employee and consequential benefits. Accordingly, this issue is decided in favour of petitioner.

Relief.

For the reasons recorded hereinabove, the claim petition is allowed to the effect that the petitioner is eligible for regularization w.e.f. 31.3.2000 as per the Himachal Pradesh Government regularization policy and he is deemed to have retired from the Government service as a regular employee w.e.f. February, 2006 on attaining the age of superannuation. So, the petitioner is entitled for all the monitory benefits as a regular employee w.e.f. 31.3.2000 onwards including the seniority and as such the reference is hereby answered in negative and the petitioner is entitled for the aforesaid service benefits. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 10 of 2002.
Instituted on. 17.1.2002
Decided on. 31.8.2012.

Salig Ram S/o Shri Lachhman Dass R/o Village Kaoulawala P.O Panjehri, Tehsil Nalagarh, District Solan, H.P.

...Petitioner.

Vs.

M/s Shivalik Hatcheries Unit-II, VPO Panjehra, Tehsil Nalagarh, District Solan, H.P through its Managing Director.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj , AR.
For respondent : Shri Rajeev Shasrma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the enquiry which caused the termination of the services of Shri Salig Ram S/o Shri Lachhman Dass w.e.f. 20.10.2000 by the Managing Director, M/s Shivalik Hatcheries Unit-II, Village and Post Office Panjehra Tehsil Nalagarh, District Solan, H.P is fair and justified? If not, what relief of service benefits including continuity in service and amount of compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was workman under the respondent and remained as such in the employment till 20.10.2007, when his services were dismissed without following the principles of natural justice. The petitioner challenged the termination order being illegal and out-come of partial domestic enquiry. In fact, the petitioner was active in trade union activities, so, the respondent was prejudiced against him. A story was fabricated against the petitioner and there was conspiracy on behalf of management, as the result, a false criminal case was registered against the petitioner. The defective chargesheet was served upon the petitioner. Before domestic enquiry, the management did not supply list of witnesses as well as documents relied upon by the management. The enquiry officer did not adopt the procedure established under law. The entire enquiry proceedings as well as enquiry report were challenged by the petitioner being violative of principles of natural justice. The witnesses examined by the management were doubtful. The enquiry officer did not explain the charges properly to the petitioner, and due opportunity to defend himself was not given to the petitioner. Before imposing extreme penalty of dismissal, the service record of petitioner was not considered and appropriate time was not given to him to reply the show cause notice. Hence, petitioner prayed to set aside the enquiry report and his dismissal order and respondent be directed to reinstate the petitioner in service with seniority and full back wages along-with other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein respondent took preliminary objections as to maintainability, suppression of material facts by the petitioner and want of legal reference. Respondent also stated that the petitioner was gainfully employed and working with some other concern and earning handsome amount. On merits, the respondent stated that the petitioner did not reveal the true facts. The petitioner along with other workers was on sanctioned leave on 8.5.2000, when he along-with other workers reached the premises of factory of respondent at 2.00 PM. There was altercation between petitioner and other workers and the security guards. At about 4.00 PM, the petitioner and other workers without any permission entered into the factory and gave severe beatings to the supervisory staff as well as senior officers of the factory. Shri Faujdar Singh, Assistant Manager sustained fracture in his arm. The petitioner along-with other workers also damaged the gate and other property of the factory and also did not allow the injured to be taken to the hospital. On 6.6.2000, at 6.00 PM, the petitioner along-with other outsiders assembled outside the main gate of the factory and raised slogans against the officers of the respondent factory and they violated the orders of Ld. Sub Judge, 1st Class, Nalagarh dated 8.5.2000 vide which the petitioners were restrained to do said unlawful activities. The petitioner along-with other workers pelted stones on tempo No. HP 12-2463 and damaged it. Due to said misconduct, the respondent management chargesheeted the petitioner along-with other workers and a proper and fair domestic enquiry was conducted against the petitioner wherein the charges of misconduct were proved. Proper and due opportunity was given to the petitioner to defend himself. The petitioner cross examined the management witnesses and after management witnesses, the petitioner was given opportunity to produce his witnesses in defence. Before dismissing petitioner, a show cause notice was served upon him. The matter was also reported to the Police. There was no violation of principles of natural justice during the enquiry. The guilt of petitioner could not be ignored, hence, the punishment of dismissal was awarded. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the enquiry which caused termination of the petitioner w.e.f 20.10.2000 by the respondent is fair and justified?

. .OPR.

2. If the issue no.1 is not proved what relief of service benefits including continuity of service, back wages and amount of compensation is entitled to?
..OPP.
3. Whether the claim of petitioner is not maintainable in the present form as alleged?
..OPR.
4. Whether the petitioner has not come to the Court with clean hands and has concealed the material facts as alleged?
..OPR.
5. Whether the reference is bad in law and has not been made by the competent authority as alleged?
..OPR.
6. Whether the petitioner is gainfully employed, if so to what effect?
..OPR.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3.	No.
Issue No.4	No.
Issue No.5	No.
Issue No.6	Yes.

Reasons for finding

Issue No .1

9. After hearing both the parties and going through the record, I am of the considered opinion that the termination of petitioner w.e.f. 20.10.2000 by the respondent is not justified and liable to set aside, for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is undisputed that the petitioner was a workman engaged by the respondent and he was terminated w.e.f. 20.10.2000. As per respondent, petitioner along-with other workmen assembled outside the factory of respondent on 8.5.2000 and 6.6.2000 respectively and damaged the gate as well as other property of respondent and also caused injuries to the officials as well as officers of the respondent factory by beating them. One Shri Faujdar Singh, Assist Manager sustained fracture in his arm. For the said misconduct, petitioner was charge-sheeted and a domestic enquiry was conducted against him in which the charges against the petitioner were proved. Consequently, a show cause notice was served upon the petitioner and finally he was terminated w.e.f. 20.10.2000.

11. The main question for determination before this Court is whether the domestic enquiry conducted against the petitioner is fair and justified. Taking into account the evidence of both the parties and other material on record, to my mind, the domestic enquiry is not sustainable under law as the principles of natural justice have been violated.

12. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts stated by him in the claim petition. On the other hand, respondent examined six witnesses. RW-1, Rajinder Singh, Advocate is the enquiry officer, RW-2, Harbhajan Singh, the Deputy Manager of respondent, RW-3 Milap Chand, the Assistant Manager, RW-4 Mukesh Chand, Labour Inspector, Nalagarh, RW-5 Faujdar Singh, the then Assistant Manager who sustained injuries in the occurrence in question and RW-6 Shri Susheel Kumar is the Assistant Manager, Venkys India Ltd., Allahabad. All these witnesses deposed that the petitioner along-with other workers entered into the premises of respondent factory on 8.5.2000 at 4.00 PM and quarreled with staff members and damaged the property of factory and gave beatings to the staff members with "Dandas" as the result, Shri Faujdar Singh sustained fracture in his arm. For this occurrence, the petitioner and other workmen were chargesheeted and domestic enquiries were conducted against them wherein they were held guilty. The petitioner has challenged the domestic enquiry being violative of principles of natural justice. The copy of enquiry report is Ex. R-4 which I have carefully perused. The most important witness in this case is RW-1 Shri Rajinder Singh, Advocate who was appointed as an enquiry officer and conducted the domestic enquiry vide his report Ex. R-4. In said report, it has been mentioned that the enquiry officer apprised the delinquent (petitioner) about the procedure to be adopted. Both the parties were apprised to produce their respective evidence along-with witnesses.

13. The cross examination of RW-1 is important wherein initially he has stated that all the documents were supplied to the worker well before starting of the enquiry but he again stated that some documents were supplied before enquiry whereas some were supplied before cross examination of the witnesses. Here, the cross examination of petitioner Shalig Ram is relevant wherein he admitted that on 27.8.2000, he received copies of Ex. P-3 to Ex. P-11. He has further admitted that on 27.8.2000, the enquiry stood closed. These facts are sufficient to establish that the documents Ex. P-3 to Ex. P-11 were supplied to the petitioner during the course of evidence in domestic enquiry for the first time on 27.8.2000 when the enquiry was closed. That means said documents were no earlier supplied to the petitioner before the start of domestic enquiry. It established that at the time of service of chargesheet, said documents were not supplied to the petitioner. It has caused serious prejudice to the petitioner, because, he could not defend himself properly and effectively in the absence of documents which were relied upon and produced in evidence by the management. I am of the opinion that a reasonable opportunity to defend the petitioner was denied. On this ground, the enquiry report is not justified and liable to set aside. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-I LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004**.

14. On behalf of respondent, RW-4 Shri Mukesh Chand Labour inspector, Nalagarh was also examined who has deposed that he had received demand notice of the workers of respondent factory dated 2.5.2000, copy of which is Ex. R-A along-with other demand notice of strike dated 2.5.2000 which is Ex. RB and the conciliation was fixed and notice of conciliation was issued which is Ex. RC. Ex. RC is revealing that conciliation was fixed for 23.5.2000 upon the demand notice. The crossexamination of this witness is revealing that one demand notice dated 24.4.2000 was also received and no action on this notice was taken. There is nothing in evidence what happened to said demand notice whether that demand notice was finally decided or not. The petitioner in para 4 of his affidavit has categorically deposed that the demand notice was not considered and the members of the union were compelled to resort to agitation. This evidence on record established that when the services of petitioner were terminated w.e.f. 20.10.2000, the

demand notice was pending. In the light of these facts, section 33 of Industrial Disputes Act, 1947, is applicable which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

15. So, it was mandatory for the respondent to obtain the prior permission/approval from the competent authority before terminating the petitioner from service. Since there is violation of section 33 of Industrial Disputes Act, 1947, therefore, on this ground also the termination orders of petitioner is not sustainable.

16. On behalf of petitioner Shri J.C Bhardwaj, AR has argued that qua occurrence in question a criminal case was registered against the petitioner and other workers in this after conducting trial, the Criminal Court has acquitted the petitioner, therefore, he prayed that in the light of said acquittal order, the petitioner could not be held guilty in domestic enquiry.

17. After due consideration, I am not in agreement with the aforesaid submission made by Shri Bhardwaj on behalf of petitioner. To my mind, in a criminal case the mode of proof is strict and the standard of proof is higher than that of in the domestic enquiry. In the domestic enquiry the matter is decided on the preponderance of probabilities whereas in a criminal trial the proof is required beyond the scope of all reasonable doubts, therefore, the nature and scope of both is different. The judgment of criminal proceedings cannot be made a base to set aside the domestic enquiry report. Here, Ld. Counsel for respondent rightly relied upon law laid down by Hon’ble Supreme Court in the matter of **2012 LLR 8**.

18. Accordingly, for the aforesaid reasons, this issue is decided against the respondent.

Issue No. 2 & 6.

19. Both these issues are interlinked and can be disposed of by a single finding. For the reasons recorded hereinabove while discussing issue no.1, the termination order of petitioner w.e.f. 20.10.2000 by the respondent is not justified being illegal having been passed on the report of domestic enquiry in which the principle of natural justice were violated. Consequently, the petitioner is entitled to be reinstated in service by the respondent with seniority and continuity. However, taking into account all facts and circumstances of the case, the petitioner is not entitled for the back wages and compensation. It cannot be believed that for the last about ten years, the petitioner is not gainfully employed. Although, the petitioner has denied that he is gainfully employed during this period but the version of petitioner cannot be accepted. The respondent has alleged that the petitioner is having agricultural income and apart from this, he has been engaged in some other factory. Although, there is no specific evidence in this regard but I find substance in the said plea taken by the respondent. The petitioner cannot remain without any job for a period of about ten years.

20. Hence, in the light of facts and circumstances of the case, the petitioner is not entitled to back wages and compensation. He is only entitled to be reinstated in service with the benefit of seniority and continuity in service. Hence, issue no.2 is partly decided in favour of petitioner whereas issue no.6 is decided in favour of respondent.

Issue No. 3.

21. There is nothing on record to show that the petition is not maintainable in the present form. Accordingly, this issue is decided against the respondent.

Issue No. 4

22. I do not find any evidence on record to suggest that the petitioner has not come to the Court with clean hands and he has suppressed and concealed material facts. The petitioner has categorically challenged the domestic enquiry. So, in the absence of any specific evidence on this issue, it is also decided against the respondent.

Issue No. 5.

23. From the careful perusal of record, the reference has been made by the competent authority legally and in accordance with law. Hence, this issue is also decided against the respondent.

Relief.

For the reasons recorded hereinafter, the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without holding proper and fair enquiry. As the result, the termination order of petitioner w.e.f. 20.10.2000 is hereby set aside. Consequently, the petitioner is entitled to be reinstated in service on the same terms and conditions with the benefits of seniority and continuity in service but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 12 of 2002.
Instituted on. 17.1.2002
Decided on. 31.8.2012.

Tara Singh S/o Shri Bachan Singh R/o Village Kotla Kalan P.O Jhajhra, Tehsil Nalagarh,
District Solan, H.P. . .Petitioner.

Vs.

M/s Shivalik Hatcheries Unit-II, VPO Panjehra, Tehsil Nalagarh, District Solan, H.P
through its Managing Director. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj , AR.

For respondent : Shri Rajeev Shasrma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the enquiry which caused the termination of the services of Shri Tara Singh S/o Shri Bachan Singh w.e.f. 20.10.2000 by the Managing Director, M/s Shivalik Hatcheries Unit-II, Village and Post Office Panjehra Tehsil Nalagarh, District Solan, H.P is fair and justified? If not, what relief of service benefits including continuity in service and amount of compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was workman under the respondent and remained as such in the employment till 20.10.2007, when his services were dismissed without following the principles of natural justice. The petitioner challenged the termination order being illegal and out-come of partial domestic enquiry. In fact, the petitioner was active in trade union activities, so, the respondent was prejudiced against him. A story was fabricated against the petitioner and there was conspiracy on behalf of management, as the result, a false criminal case was registered against the petitioner. The defective chargesheet was served upon the petitioner. Before domestic enquiry, the management did not supply list of witnesses as well as documents relied upon by the management. The enquiry officer did not adopt the procedure established under law. The entire enquiry proceedings as well as enquiry report were challenged by the petitioner being violative of principles of natural justice. The witnesses examined by the management were doubtful. The enquiry officer did not explain the charges properly to the petitioner, and due opportunity to defend himself was not given to the petitioner. Before imposing extreme penalty of

dismissal, the service record of petitioner was not considered and appropriate time was not given to him to reply the show cause notice. Hence, petitioner prayed to set aside the enquiry report and his dismissal order and respondent be directed to reinstate the petitioner in service with seniority and full back wages along-with other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein respondent took preliminary objections as to maintainability, suppression of material facts by the petitioner and want of legal reference. Respondent also stated that the petitioner was gainfully employed and working with some other concern and earning handsome amount. On merits, the respondent stated that the petitioner did not reveal the true facts. The petitioner along with other workers was on sanctioned leave on 8.5.2000, when he along-with other workers reached the premises of factory of respondent at 2.00 PM. There was altercation between petitioner and other workers and the security guards. At about 4.00 PM, the petitioner and other workers without any permission entered into the factory and gave severe beatings to the supervisory staff as well as senior officers of the factory. Shri Faujdar Singh, Assistant Manager sustained fracture in his arm. The petitioner along-with other workers also damaged the gate and other property of the factory and also did not allow the injured to be taken to the hospital. On 6.6.2000, at 6.00 PM, the petitioner along-with other outsiders assembled outside the main gate of the factory and raised slogans against the officers of the respondent factory and they violated the orders of Ld. Sub Judge, 1st Class, Nalagarh dated 8.5.2000 vide which the petitioners were restrained to do said unlawful activities. The petitioner alongwith other workers pelted stones on tempo No. HP 12-2463 and damaged it. Due to said misconduct, the respondent management chargesheeted the petitioner along-with other workers and a proper and fair domestic enquiry was conducted against the petitioner wherein the charges of misconduct were proved. Proper and due opportunity was given to the petitioner to defend himself. The petitioner cross examined the management witnesses and after management witnesses, the petitioner was given opportunity to produce his witnesses in defence. Before dismissing petitioner, a show cause notice was served upon him. The matter was also reported to the Police. There was no violation of principles of natural justice during the enquiry. The guilt of petitioner could not be ignored, hence, the punishment of dismissal was awarded. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the enquiry which caused termination of the petitioner w.e.f 20.10.2000 by the respondent is fair and justified? OPR....
2. If the issue no.1 is not proved what relief of service benefits including continuity of service, back wages and amount of compensation is entitled to? OPP...
3. Whether the claim of petitioner is not maintainable in the present form as alleged? OPR.....
4. Whether the petitioner has not come to the Court with clean hands and has concealed the material facts as alleged? OPR...
5. Whether the reference is bad in law and has not been made by the competent authority as alleged? OPR...
6. Whether the petitioner is gainfully employed, if so to what effect? OPR...

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3 No.

Issue No.4 No.

Issue No.5 No.

Issue No.6 Yes.

Reasons for finding.

Issue No.1

9. After hearing both the parties and going through the record, I am of the considered opinion that the termination of petitioner w.e.f. 20.10.2000 by the respondent is not justified and liable to set aside, for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is undisputed that the petitioner was a workman engaged by the respondent and he was terminated w.e.f. 20.10.2000. As per respondent, petitioner along-with other workmen assembled outside the factory of respondent on 8.5.2000 and 6.6.2000 respectively and damaged the gate as well as other property of respondent and also caused injuries to the officials as well as officers of the respondent factory by beating them. One Shri Faujdar Singh, Assist Manager sustained fracture in his arm. For the said misconduct, petitioner was charge-sheeted and a domestic enquiry was conducted against him in which the charges against the petitioner were proved. Consequently, a show cause notice was served upon the petitioner and finally he was terminated w.e.f. 20.10.2000.

11. The main question for determination before this Court is whether the domestic enquiry conducted against the petitioner is fair and justified. Taking into account the evidence of both the parties and other material on record, to my mind, the domestic enquiry is not sustainable under law as the principles of natural justice have been violated.

12. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts stated by him in the claim petition. On the other hand, respondent examined six witnesses. RW-1, Sanjeev Sharma, Advocate is the enquiry officer, RW-2, Harbhajan Singh, the Deputy Manager of respondent, RW-3 Milap Chand, the Assistant Manager, RW-4 Mukesh Chand, Labour Inspector, Nalagarh, RW-5 Faujdar Singh, the then Assistant Manager who sustained injuries in the occurrence in question and RW-6 Susheel Kumar Singh is the Assistant Manager Venkys India Ltd., Allahabad. All these witnesses deposed that the petitioner along-with other workers entered into the premises of respondent factory on 8.5.2000 at 4.00 PM and quarreled with staff members and damaged the property of factory and gave beatings to the staff members with "Dandas" as the result, Shri Faujdar Singh sustained fracture in his arm. For this occurrence, the petitioner and other workmen were chargesheeted and domestic enquiries were conducted against them wherein they were held guilty. The petitioner has challenged the domestic enquiry being violative of principles

of natural justice. The copy of enquiry report is Ex. R-4 which I have carefully perused. The most important witness in this case is RW-1 Shri Sanjeev Sharma, Advocate who was appointed as an enquiry officer and conducted the domestic enquiry vide his report Ex. R-4. In said report, it has been mentioned that the enquiry officer apprised the delinquent (petitioner) about the procedure to be adopted. Both the parties were apprised to produce their respective evidence along-with witnesses.

13. The cross examination of RW-1 is important wherein initially he has stated that all the documents were supplied to the worker well before starting of the enquiry but he again stated that some documents were supplied before enquiry whereas some were supplied before cross examination of the witnesses. Here, the cross examination of petitioner Tara Singh is relevant wherein he admitted that on 7.9.2000, he received copies of Ex. P-10 to Ex. P-13. He has further admitted that on 7.9.2000, the enquiry stood closed. These facts are sufficient to establish that the documents Ex. P-10 to Ex. P-13 were supplied to the petitioner during the course of evidence in domestic enquiry for the first time on 7.9.2000 when the enquiry was closed. That means said documents were no earlier supplied to the petitioner before the start of domestic enquiry. It established that at the time of service of chargesheet, said documents were not supplied to the petitioner. It has caused serious prejudice to the petitioner, because, he could not defend himself properly and effectively in the absence of documents which were relied upon and produced in evidence by the management. I am of the opinion that a reasonable opportunity to defend the petitioner was denied. On this ground, the enquiry report is not justified and liable to set aside. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-I LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004**

14. On behalf of respondent, RW-4 Shri Mukesh Chand Labour inspector, Nalagarh was also examined who has deposed that he had received demand notice of the workers of respondent factory dated 2.5.2000, copy of which is Ex. R-A along-with other demand notice of strike dated 2.5.2000 which is Ex. RB and the conciliation was fixed and notice of conciliation was issued which is Ex. RC. Ex. RC is revealing that conciliation was fixed for 23.5.2000 upon the demand notice. The crossexamination of this witness is revealing that one demand notice dated 24.4.2000 was also received and no action on this notice was taken. There is nothing in evidence what happened to said demand notice whether that demand notice was finally decided or not. The petitioner in para 4 of his affidavit has categorically deposed that the demand notice was not considered and the members of the union were compelled to resort to agitation. This evidence on record established that when the services of petitioner were terminated w.e.f. 20.10.2000, the demand notice was pending. In the light of these facts, section 33 of Industrial Disputes Act, 1947, is applicable which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

15. So, it was mandatory for the respondent to obtain the prior permission/approval from the competent authority before terminating the petitioner from service. Since there is violation of section 33 of Industrial Disputes Act, 1947, therefore, on this ground also the termination orders of petitioner is not sustainable.

16. On behalf of petitioner Shri J.C Bhardwaj, AR has argued that qua occurrence in question a criminal case was registered against the petitioner and other workers in this after conducting trial, the Criminal Court has acquitted the petitioner, therefore, he prayed that in the light of said acquittal order, the petitioner could not be held guilty in domestic enquiry.

17. After due consideration, I am not in agreement with the aforesaid submission made by Shri Bhardwaj on behalf of petitioner. To my mind, in a criminal case the mode of proof is strict and the standard of proof is higher than that of in the domestic enquiry. In the domestic enquiry the matter is decided on the preponderance of probabilities whereas in a criminal trial the proof is required beyond the scope of all reasonable doubts, therefore, the nature and scope of both is different. The judgement of criminal proceedings cannot be made a base to set aside the domestic enquiry report. Here, Ld. Counsel for respondent rightly relied upon law laid down by Hon'ble Supreme Court in the matter of **2012 LLR 8**.

18. Accordingly, for the aforesaid reasons, this issue is decided against the respondent.

Issue No.2 & 6.

19. Both these issues are interlinked and can be disposed of by a single finding. For the reasons recorded hereinabove while discussing issue no.1, the termination order of petitioner w.e.f. 20.10.2000 by the respondent is not justified being illegal having been passed on the report of domestic enquiry in which the principle of natural justice were violated. Consequently, the petitioner is entitled to be reinstated in service by the respondent with seniority and continuity. However, taking into account all facts and circumstances of the case, the petitioner is not entitled for the back wages and compensation. It cannot be believed that for the last about ten years, the petitioner is not gainfully employed. Although, the petitioner has denied that he is gainfully employed during this period but the version of petitioner cannot be accepted. The respondent has alleged that the petitioner is having agricultural income and apart from this, he has been engaged in some other factory. Although, there is no specific evidence in this regard but I find substance in the said plea taken by the respondent.

The petitioner cannot remain without any job for a period of about ten years.

20. Hence, in the light of facts and circumstances of the case, the petitioner is not entitled to back wages and compensation. He is only entitled to be reinstated in service with the benefit of seniority and continuity in service. Hence, issue no.2 is partly decided in favour of petitioner whereas issue no.6 is decided in favour of respondent.

Issue No.3.

21. There is nothing on record to show that the petition is not maintainable in the present form. Accordingly, this issue is decided against the respondent.

Issue No.4

22. I do not find any evidence on record to suggest that the petitioner has not come to the Court with clean hands and he has suppressed and concealed material facts. The petitioner has categorically challenged the domestic enquiry. So, in the absence of any specific evidence on this issue, it is also decided against the respondent.

Issue No.5.

23. From the careful perusal of record, the reference has been made by the competent authority legally and in accordance with law. Hence, this issue is also decided against the respondent.

Relief.

For the reasons recorded hereinafter, the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without holding proper and fair enquiry. As the result, the termination order of petitioner *w.e.f.* 20.10.2000 is hereby set aside. Consequently, the petitioner is entitled to be reinstated in service on the same terms and conditions with the benefits of seniority and continuity in service but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 9 of 2002.
Instituted on. 17.1.2002
Decided on. 31.8.2012.

Ujagar Singh S/o Shri Devi Ram R/o Village and P.O Panjehra, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

Vs.

M/s Shivalik Hatcheries Unit-II, VPO Panjehra, Tehsil Nalagarh, District Solan, H.P through its Managing Director. . .Respondent.

For petitioner : Shri J.C Bhardwaj , AR.

For respondent : Shri Rajeev Shasrma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the enquiry which caused the termination of the services of Shri Ujagar Singh S/o Shri Devi Ram w.e.f. 20.10.2000 by the Managing Director, M/s Shivalik Hatcheries Unit-II, Village and Post Office Panjehra Tehsil Nalagarh, District Solan, H.P is fair and justified? If not, what relief of service benefits including continuity in service and amount of compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was workman under the respondent and remained as such in the employment till 20.10.2007, when his services were dismissed without following the principles of natural justice. The petitioner challenged the termination order being illegal and out-come of partial domestic enquiry. In fact, the petitioner was active in trade union activities, so, the respondent was prejudiced against him. A story was fabricated against the petitioner and there was conspiracy on behalf of management, as the result, a false criminal case was registered against the petitioner. The defective chargesheet was served upon the petitioner. Before domestic enquiry, the management did not supply list of witnesses as well as documents relied upon by the management. The enquiry officer did not adopt the procedure established under law. The entire enquiry proceedings as well as enquiry report were challenged by the petitioner being violative of principles of natural justice.

The witnesses examined by the management were doubtful. The enquiry officer did not explain the charges properly to the petitioner, and due opportunity to defend himself was not given to the petitioner. Before imposing extreme penalty of dismissal, the service record of petitioner was not considered and appropriate time was not given to him to reply the show cause notice. Hence, petitioner prayed to set aside the enquiry report and his dismissal order and respondent be directed to reinstate the petitioner in service with seniority and full back wages along-with other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein respondent took preliminary objections as to maintainability, suppression of material facts by the petitioner and want of legal reference. Respondent also stated that the petitioner was gainfully employed and working with some other concern and earning handsome amount. On merits, the respondent stated that the petitioner did not reveal the true facts. The petitioner along with other workers was on sanctioned leave on 8.5.2000, when he along-with other workers reached the premises of factory of respondent at 2.00 PM. There was altercation between petitioner and other workers and the security guards. At about 4.00 PM, the petitioner and other workers without any permission entered into the factory and gave severe beatings to the supervisory staff as well as senior officers of the factory. Shri Faujdar Singh, Assistant Manager sustained fracture in his arm. The petitioner along-with other workers also damaged the gate and other property of the factory and also did not allow the injured to be taken to the hospital. On 6.6.2000, at 6.00 PM, the petitioner along-with other outsiders assembled outside the main gate of the factory and raised slogans against the officers of the respondent factory and they violated the orders of Ld. Sub Judge, 1st Class, Nalagarh dated 8.5.2000 vide which the petitioners were restrained to do said unlawful activities.

The petitioner alongwith other workers pelted stones on tempo No. HP 12-2463 and damaged it. Due to said misconduct, the respondent management chargesheeted the petitioner along-with other workers and a proper and fair domestic enquiry was conducted against the petitioner wherein the charges of misconduct were proved. Proper and due opportunity was given to the petitioner to defend himself. The petitioner cross examined the management witnesses and after management witnesses, the petitioner was given opportunity to produce his witnesses in defence. Before dismissing petitioner, a show cause notice was served upon him. The matter was also reported to the Police. There was no violation of principles of natural justice during the enquiry. The guilt of petitioner could not be ignored, hence, the punishment of dismissal was awarded. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and reasserted the averments already made in the petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the enquiry which caused termination of the petitioner w.e.f 20.10.2000 by the respondent is fair and justified? OPR....
2. If the issue no.1 is not proved what relief of service benefits including continuity of service, back wages and amount of compensation is entitled to? OPP.....
3. Whether the claim of petitioner is not maintainable in the present form as alleged? OPR.....
4. Whether the petitioner has not come to the Court with clean hands and has concealed the material facts as alleged? OPR...
5. Whether the reference is bad in law and has not been made by the competent authority as alleged? OPR.....
6. Whether the petitioner is gainfully employed, if so to what effect? OPR.....

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3. No.

Issue No.4 No.

Issue No.5 No.

Issue No.6 Yes.

Reasons for finding.

9. After hearing both the parties and going through the record, I am of the considered opinion that the termination of petitioner w.e.f. 20.10.2000 by the respondent is not justified and liable to set aside, for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is undisputed that the petitioner was a workman engaged by the respondent and he was terminated w.e.f. 20.10.2000. As per respondent, petitioner along-with other workmen assembled outside the factory of respondent on 8.5.2000 and 6.6.2000 respectively and damaged the gate as well as other property of respondent and also caused injuries to the officials as well as officers of the respondent factory by beating them. One Shri Faujdar Singh, Assist Manager sustained fracture in his arm. For the said misconduct, petitioner was charge-sheeted and a domestic enquiry was conducted against him in which the charges against the petitioner were proved. Consequently, a show cause notice was served upon the petitioner and finally he was terminated w.e.f. 20.10.2000.

11. The main question for determination before this Court is whether the domestic enquiry conducted against the petitioner is fair and justified. Taking into account the evidence of both the parties and other material on record, to my mind, the domestic enquiry is not sustainable under law as the principles of natural justice have been violated.

12. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts stated by him in the claim petition. On the other hand, respondent examined six witnesses. RW-1, Rajinder Singh, Advocate is the enquiry officer, RW-2, Harbhajan Singh, the Deputy Manager of respondent, RW-3 Milap Chand, the Assistant Manager, RW-4 Mukesh Chand, Labour Inspector, Nalagarh, RW-5 Faujdar Singh, the then Assistant Manager who sustained injuries in the occurrence in question and RW-6 Susheel Kumar Singh, Assistant Manager, Venkys India Ltd., Allahabad. All these witnesses deposed that the petitioner along-with other workers entered into the premises of respondent factory on 8.5.2000 at 4.00 PM and quarreled with staff members and damaged the property of factory and gave beatings to the staff members with "Dandas" as the result, Shri Faujdar Singh sustained fracture in his arm. For this occurrence, the petitioner and other workmen were chargesheeted and domestic enquiries were conducted against them wherein they were held guilty. The petitioner has challenged the domestic enquiry being violative of principles of natural justice. The copy of enquiry report is Ex. R-4 which I have carefully perused. The most important witness in this case is RW-1 Shri Rajinder Singh, Advocate who was appointed as an enquiry officer and conducted the domestic enquiry vide his report Ex. R-4. In said report, it has been mentioned that the enquiry officer apprised the delinquent (petitioner) about the procedure to be adopted. Both the parties were apprised to produce their respective evidence along-with witnesses.

13. The cross examination of RW-1 is important wherein initially he has stated that all the documents were supplied to the worker well before starting of the enquiry but he again stated that some documents were supplied before enquiry whereas some were supplied before cross examination of the witnesses. Here, the cross examination of petitioner Ujagar Singh is relevant wherein he admitted that on 27.8.2000, he received copies of Ex. P-4 to Ex. P-12. He has further admitted that on 27.8.2000, the enquiry stood closed. These facts are sufficient to establish that the documents Ex. P-4 to Ex. P-12 were supplied to the petitioner during the course of evidence in domestic enquiry for the first time on 27.8.2000 when the enquiry was closed. That means said documents were no earlier supplied to the petitioner before the start of domestic enquiry. It established that at the time of service of chargesheet, said documents were not supplied to the petitioner. It has caused serious prejudice to the petitioner, because, he could not defend himself properly and effectively in the absence of documents which were relied upon and produced in

evidence by the management. I am of the opinion that a reasonable opportunity to defend the petitioner was denied. On this ground, the enquiry report is not justified and liable to set aside. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of **2002-II LLJ 549, 2011-II LLJ 627 and 2007-I LLJ 1004**

14. On behalf of respondent, RW-4 Shri Mukesh Chand Labour inspector, Nalagarh was also examined who has deposed that he had received demand notice of the workers of respondent factory dated 2.5.2000, copy of which is Ex. R-1 along-with other demand notice of strike dated 2.5.2000 which is Ex. RB and the conciliation was fixed and notice of conciliation was issued which is Ex. RC. Ex. RC is revealing that conciliation was fixed for 23.5.2000 upon the demand notice. The cross examination of this witness is revealing that one demand notice dated 24.4.2000 was also received and no action on this notice was taken. There is nothing in evidence what happened to said demand notice whether that demand notice was finally decided or not. The petitioner in para 4 of his affidavit has categorically deposed that the demand notice was not considered and the members of the union were compelled to resort to agitation. This evidence on record established that when the services of petitioner were terminated w.e.f. 20.10.2000, the demand notice was pending. In the light of these facts, section 33 of Industrial Disputes Act, 1947, is applicable which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.— (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

15. So, it was mandatory for the respondent to obtain the prior permission/approval from the competent authority before terminating the petitioner from service. Since there is violation of section 33 of Industrial Disputes Act, 1947, therefore, on this ground also the termination orders of petitioner is not sustainable.

16. On behalf of petitioner Shri J.C Bhardwaj, AR has argued that qua occurrence in question a criminal case was registered against the petitioner and other workers in this after conducting trial, the Criminal Court has acquitted the petitioner, therefore, he prayed that in the light of said acquittal order, the petitioner could not be held guilty in domestic enquiry.

17. After due consideration, I am not in agreement with the aforesaid submission made by Shri Bhardwaj on behalf of petitioner. To my mind, in a criminal case the mode of proof is strict and the standard of proof is higher than that of in the domestic enquiry. In the domestic enquiry the matter is decided on the preponderance of probabilities whereas in a criminal trial the proof is required beyond the scope of all reasonable doubts, therefore, the nature and scope of both is different. The judgement of criminal proceedings cannot be made a base to set aside the domestic enquiry report. Here, Ld. Counsel for respondent rightly relied upon law laid down by Hon'ble Supreme Court in the matter of **2012 LLR 8**.

18. Accordingly, for the aforesaid reasons, this issue is decided against the respondent.

Issue No.2 & 6.

19. Both these issues are interlinked and can be disposed of by a single finding. For the reasons recorded hereinabove while discussing issue no.1, the termination order of petitioner w.e.f. 20.10.2000 by the respondent is not justified being illegal having been passed on the report of domestic enquiry in which the principle of natural justice were violated. Consequently, the petitioner is entitled to be reinstated in service by the respondent with seniority and continuity. However, taking into account all facts and circumstances of the case, the petitioner is not entitled for the back wages and compensation. It cannot be believed that for the last about ten years, the petitioner is not gainfully employed. Although, the petitioner has denied that he is gainfully employed during this period but the version of petitioner cannot be accepted. The respondent has alleged that the petitioner is having agricultural income and apart from this, he has been engaged in some other factory. Although, there is no specific evidence in this regard but I find substance in the said plea taken by the respondent. The petitioner cannot remain without any job for a period of about ten years.

20. Hence, in the light of facts and circumstances of the case, the petitioner is not entitled to back wages and compensation. He is only entitled to be reinstated in service with the benefit of seniority and continuity in service. Hence, issue no.2 is partly decided in favour of petitioner whereas issue no.6 is decided in favour of respondent.

Issue No.3.

21. There is nothing on record to show that the petition is not maintainable in the present form. Accordingly, this issue is decided against the respondent.

Issue No.4

22. I do not find any evidence on record to suggest that the petitioner has not come to the Court with clean hands and he has suppressed and concealed material facts. The petitioner has categorically challenged the domestic enquiry. So, in the absence of any specific evidence on this issue, it is also decided against the respondent.

Issue No.5.

23. From the careful perusal of record, the reference has been made by the competent authority legally and in accordance with law. Hence, this issue is also decided against the respondent.

Relief.

For the reasons recorded hereinafter, the reference is answered in negative as the services of the petitioner were wrongly and illegally terminated by the respondent without holding proper and fair enquiry. As the result, the termination order of petitioner *w.e.f.* 20.10.2000 is hereby set aside. Consequently, the petitioner is entitled to be reinstated in service on the same terms and conditions with the benefits of seniority and continuity in service but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of August, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला,
हिमाचल प्रदेश

नं० मुकद्दमा : 68/2012

तारीख दायर : 3-10-2012

श्रीमती महेन्द्र कौर पत्नी श्री कर्म सिंह, निवासी गांव उपर लहासा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश प्रार्थिया।

बनाम

आम जनता

प्रतिवादी।

दरखास्त दरुस्ती नाम खाता/खतौनी नं० 83/153 चक लहासा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

नोटिस बनाम आम जनता।

यह दरखास्त हमारे समक्ष प्रार्थिया श्रीमती महेन्द्र कौर पत्नी श्री कर्म सिंह, निवासी गांव उपर लहासा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस आशय के साथ प्रस्तुत की है कि अराजी खाता/खतौनी नं० 83/153 वाका चक लहासा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश में प्रार्थिया का नाम मेहत कौर दर्शाया गया है जो सही नहीं है। प्रार्थिया का सही नाम महेन्द्र कौर है जिसकी पुष्टि के लिए प्रार्थिया ने छाया प्रति किसान पास बुक, मतदाता पहचान-पत्र व शपथ-पत्र संलग्न दरखास्त कर रखे हैं जिसमें प्रार्थिया का सही नाम महेन्द्र कौर दर्शाया गया है। प्रार्थिया अपना नाम उक्त कागजात में मेहत कौर के स्थान पर महेन्द्र कौर उर्फ मेहत कौर दरुस्त/दर्ज करवाना चाहती है।

अतः आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि प्रार्थिया का नाम मेहत कौर के स्थान पर महेन्द्र कौर उर्फ मेहत कौर दर्ज करने बारा किसी को किसी प्रकार का उजर व एतराज हो तो वह दिनांक 22-11-2012 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर अपना उजर व एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 6-10-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला,
हिमाचल प्रदेश

नं० मुकद्दमा : 71/2012

तारीख दायर : 10-10-2012

श्री रोशन लाल पुत्र स्व० श्री तारा चन्द, निवासी गांव शनेरी, डा० शिंगला, तहसील रामपुर बुशैहर,
जिला शिमला, हिमाचल प्रदेश प्राथी।

बनाम

आम जनता

प्रतिवादी।

दरखास्त दुरुस्ती नाम खाता/खतौनी नं० 5/35 चक शनेरी तहसील रामपुर बुशैहर, जिला शिमला,
हिमाचल प्रदेश।

नोटिस बनाम आम जनता।

यह दरखास्त हमारे समक्ष प्राथी श्री रोशन लाल पुत्र स्व० श्री तारा चन्द, निवासी गांव शनेरी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस आशय के साथ प्रस्तुत की है कि अराजी खाता/खतौनी नं० 5/35 चक शनेरी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश में प्राथी के पिता का नाम भोला देव दर्शाया गया है जो सही नहीं है। प्राथी के पिता का सही नाम तारा चन्द है जिसकी पुष्टि के लिए प्राथी ने छाया प्रति नकल परिवार रजिस्टर, मतदाता पहचान-पत्र, राशन कार्ड व शपथ-पत्र संलग्न दरखास्त कर रखे हैं जिसमें प्राथी के पिता का सही नाम तारा चन्द दर्शाया गया है। प्राथी अपने पिता का नाम उक्त माल कागजात में भोला देव के स्थान पर तारा चन्द उर्फ भोला देव दुरुस्त/दर्ज करवाना चाहता है।

अतः आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि प्राथी अपने पिता का नाम उक्त माल कागजात में भोला देव के स्थान पर तारा चन्द उर्फ भोला देव दर्ज करने बारा किसी को किसी प्रकार का उजर व एतराज हो तो वह दिनांक 22-11-2012 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर अपना उजर व एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 12-10-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री मुकेश शर्मा, कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला,
हिमाचल प्रदेश

नं० मुकद्दमा : 69/2012

तारीख दायर : 6-10-2012

1. श्री राजेन्द्र पाल पुत्र श्री प्रेम दास, निवासी गांव शाह, डा० दोफदा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश
2. श्रीमती सुमित्रा देवी पुत्री श्री बुद्ध राम, निवासी गांव फुन्जा, डा० मझेवली, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

बनाम

आम जनता

... द्वितीय पक्ष।

ग्राम पंचायत दोफदा के अभिलेख में शादी पंजीकरण बारे।

नोटिस बनाम आम जनता।

श्री राजेन्द्र पाल पुत्र श्री प्रेम दास, निवासी गांव शाह, डा० दोफदा, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश व श्रीमती सुमित्रा देवी पुत्री श्री बुद्ध राम, निवासी गांव फुन्जा, डा० मझेवली, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में संयुक्त प्रार्थना-पत्र मय शपथ-पत्र गुजारा है कि उनका विवाह दिनांक 19-8-2011 को सम्पन्न हुआ है तथा ग्राम पंचायत अभिलेख दोफदा के कार्यालय में विवाह पंजीकरण नहीं हुआ है। अब ग्राम पंचायत दोफदा के अभिलेख में विवाह पंजीकरण करवाना चाहते हैं, रिपोर्ट कार्यालय ग्राम पंचायत दोफदा से पाया गया कि इनके विवाह का पंजीकरण अभी तक नहीं हुआ है। अब कार्यालय ग्राम पंचायत दोफदा के अभिलेख में विवाह पंजीकरण करवाना चाहते हैं।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त राजेन्द्र पाल व सुमित्रा देवी के विवाह का पंजीकरण ग्राम पंचायत अभिलेख में दर्ज करने बारे किसी भी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 22-11-2012 को या इससे पूर्व प्रातः 10.00 बजे हाजिर अदालत आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार पंचायत अभिलेख में विवाह पंजीकरण करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 6-10-2012 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

**In the Court of Shri Y. P. S. Verma, H. A. S., Sub Divisional Magistrate Theog,
District Shimla**

Promila Sharma d/o Shri Sita Ram r/o Village Bhewag, P. O. Mundu , Tehsil Theog,
District Shimla, Himachal Pradesh

... Applicant.

Versus

State of H. P. Through General Public

... Respondent.

Application under section 13 (3) of Birth & Death Registration Act, 1969.

Whereas, Promila Sharma d/o Shri Sita Ram r/o Village Bhewag, P. O. Mundu , Tehsil Theog, District Shimla, Himachal Pradesh has moved an application to the undersigned under Act *ibid* alongwith affidavit and other documents that she intends to enter the name of Nikhil in the record of Gram Panchayat Mundu, Tehsil Theog, District Shimla, Himachal Pradesh.

Whereas, by this proclamation, the general public is hereby informed that any person having any objection for entry mentioned above, may submit his objection in writing in this court on or before 17-11-2012, failing which no objection will be entertained after the expiry of date.

Given under my hand and seal of the court on this 3rd day of August, 2012.

Seal.

Y. P. S. VERMA,
Sub Divisional Magistrate,
Theog, District Shimla.